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THE

MARITIME LAW

OF

EUROPE.

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THE MARITIME LAW OF EUROPE.

BY M. D. A. AZUNI,

LATE SENATOR AND JUDGE IN THE COMMERCIAL AND MARITIME COURT OF NICE, MEMBER OF THE ACADEMIES OF SCIENCES, AT TURIN, NAPLES, FLORENCE, MODENA, ALEXANDRIA, CARARA, ROME, AND TRIESTE;

MEMBER OF THE ATHENEUM OF ARTS, AND OF THE ACADEMY OF LEGISLATION, AT PARIS, AND OF THE ACADEMY OF ARTS AND SCIENCES, AT MARSEILLES.

Quid deceat, quid non; quò virtus, quò ferat error.
HOR. *de Art. Poet.*

IN TWO VOLUMES.

TRANSLATED FROM THE FRENCH.

VOL I.

NEW-YORK:

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DISTRICT OF NEW-YORK, ss.

BE IT REMEMBERED, That on the twelfth day of April, in the thirtieth year of the Independence of the United States of America, WILLIAM JOHNSON, of the said District, hath deposited (L. S.) in this office the Title of a Book, the right whereof he claims, as author, in the words following, to wit:

"THE MARITIME LAW OF EUROPE,

BY M. D. A. AZUNI,

Late Senator and Judge, in the Commercial and Maritime Court of Nice, Member of the Academies of Sciences at Turin, Naples, Florence. Modena, Alexandria, Carara, Rome, and Trieste; Member of the Atheneum of Arts, and of the Academy of Legislation, at Paris, and of the Academy of Arts and Sciences, at Marseilles.

Quid deceat, quid non; quò virtus, quò ferat error.
HOR. *de Art. Poet.*

IN TWO VOLUMES.—TRANSLATED FROM THE FRENCH.
VOLUME I."

In conformity to the Act of the Congress of the United States, entitled, "An act for the encouragement of learning, by securing the copies of "Maps, Charts, and Books, to the authors and proprietors of such copies, "during the times therein mentioned:" And also, to an act, entitled, "An Act supplementary to an Act entitled, "An Act for the encouragement of learning, by securing the copies of Maps, Charts, and Books, to "the authors and proprietors of such copies, during the times therein "mentioned, and extending the benefits thereof to the arts of Designing, "Engraving, and Etching, Historical and other prints."

EDWARD DUNSCOMB,
Clerk of the District of New-York.

3 - MAY - 1

ADVERTISEMENT,

BY THE AUTHOR.

THE work here presented to the public is essentially different from my first performance, published in the Italian language, in 1795, under the title of *Sistema universale dei Principii del diritto marittimo dell'Europa*, which was translated, at Paris, in 1798, from the second edition, published at Trieste, in 1796.

Notwithstanding the inaccuracies of that translation, it has been honoured with the approbation of the public ; its principles have been cited in the national tribunals,(1) and it has been often referred

(1) See the *Opinion of Garat, member of the Council of Ancients*, (now a Senator) *on the resolution of the 25th January*, 1799, *relative to maritime captures*, at the sittings of the 22d February, 1799, pages 12, 28, and 30.

to as an authority, by legislators, by maritime courts,(2) and by lawyers engaged in the study of this most interesting part of public law.

Pleased with the flattering success of this production in France, I saw, with regret, the many errors into which the translator had fallen, and the innumerable instances in which he had mistaken the sense of the author, which proved that he was not very conversant with the Italian language, and much less so with the science of public law.

It became my duty to correct the sense of the translation, by the text of that part of the original I have preserved.

The present work, in which I have given greater scope to my ideas, and have recast and placed in new order the articles contained in the former publication, and to which considerable additions have been

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(2) See the different Memoirs to the Council of Prizes, and the numerous opinions delivered by the Commissary of the Government to the Council.

made, suggested by the existing circumstances of Europe, required the adoption of a different title, more adapted to the new plan I had marked out.

The first part is enlarged by a sketch of the origin and progress of navigation, by a more full exposition of the principles, merely stated before, in regard to the liberty of the seas, and by a complete history of the nations who have laid claim to maritime empire from the remotest ages to the present time.

Among the new matters in the second part, the most deserving of attention, are, an article on the origin and causes of naval wars ; a succinct analysis of the late laws of the French empire, concerning maritime captures, and of the modes of proceeding in their ajudication in the council of prizes, established by the government, at Paris ; an account of the laws of the different powers of Europe, in regard to recaptures ; and, lastly, several other articles, exhibiting views of the sub-

ject which my experience and study of this interesting branch of the law of nations have shown to be necessary.*

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* Dominick Albert Azuni, was born at Sassari, in the island of Sardinia. This island is about 700 Italian miles in circumference; its greatest length is 175 miles, and its greatest breadth, about 100. Its principal towns are, Cagliari and Sassari, each containing an university, and about 30,000 inhabitants. M. Azuni, in 1802, published at Paris, *A Geographical, and Natural History of Sardinia*, in two volumes 8vo, a work of considerable merit, and containing much interesting information of an important island, but little known to the generality of readers.

His other works are, 1. *An universal Dictionary of Mercantile Jurisprudence*, in 4to, printed at Nice, 1786, and 1788; 2. A 5th vol. 4to, containing *The perfect Mentor of Merchants*, printed at Trieste, in 1796; 3. *A Dissertation on the Mariner's Compass*, read before the Academy of Florence, in 1795, and reprinted, with additions, at Venice, in 1797....T.

THE

TRANSLATOR'S PREFACE.

MARITIME Commerce, while it connects the civilized nations of the world together by the ties of mutual interest, augments the means of their prosperity and happiness, and multiplies the sources of individual enjoyment, renders them, at the same time, more dependent on each other. Physical and moral causes, of the most irresistible nature, have induced the people of the United States to engage, with unexampled ardour, in commercial pursuits. This commerce, that gives animation and vigour to all the operations of industry, and without which the people would sink into indolence, or become ignorant and ferocious, as it draws them nearer to foreign countries, exposes them also to the influence of those conflicts which agitate the repose of distant nations. For it is one of the many evils of war, that its action is not confined to the immediate parties in the contest, but strikes, with greater or less force, all who come within its reach.

Remote from the great theatre of political and military ambition, the United States are happily exempt from that direct pressure which might compel them to take part in the wars of Europe; and they are impelled by interest and policy, to observe a perfect neutrality between the belligerent nations of that continent. To maintain this fortunate and advantageous position, for a long period of time, will be attended with no little difficulty, and may require consummate prudence and address. The surest guide, in this embarrassing situation, is a clear and accurate acquaintance with the principles by which the intercourse between belligerents and neutrals is to be regulated. Whatever relates, therefore, to the maritime law of Europe, or which can throw light on the obscure and dubious path of neutral conduct, cannot fail of being interesting to the people of America.

Notwithstanding the great importance of the subject, the most distinguished writers on the law of nations, GROTIUS, PUFFENDORF, WOLFIUS, VATTEL, and others, have passed it over with very slight attention, deterred, perhaps, by the variety of delicate and difficult questions, to which it gave rise. The nature of sovereignty, the rights of war and peace, the functions and privileges of ambassadors; the laws of negotiation, the formation of treaties,

and the rules of their interpretation; these, and many other subjects, have been discussed by them with great learning and ability; but they appear to have been inattentive to the changes produced in the interests and affairs of nations, by the extension of navigation and commerce. The age of commerce has succeeded to the age of chivalry, and the influence of this new spirit is to be discovered in all the political transactions of Europe. The cases which give rise to the discussion of neutral and belligerent rights, have been increased and infinitely diversified; and in proportion to the progress of refinement and civilization, belligerent nations have been more disposed to listen to the voice of reason and justice, and to examine and respect the claims of neutrals, whose rights have been infringed by the operations of war. Appeals to the law of nations by neutral states, who are generally the weakest, are listened to with more attention than in former times. For it is not true, as some have pretended, because, law and right are sometimes disregarded, or trodden under foot by military power, that law and justice are empty names; and that a science, which teaches the reciprocal duties of sovereign states, is a vain and useless study. Such a theory would confound all ideas of right and wrong, and subvert the whole system of morality and jurispru-

dence. If well founded, it would equally apply to individuals, and to a large class of moral duties which do not come under the cognisance of municipal law, and are not enforced by its sanctions. The very existence of social intercourse, depends on the observance of many rules of conduct, which are left to the conscience of each member of society, and his own sense of moral obligation. If a knowledge of these duties, if the precepts of morality and religion, have no influence in restraining men from acts of injustice, the volumes which contain the lessons of wisdom, and the maxims of sages, might be destroyed as useless lore; public instructors might abandon their schools; the teachers of the sublime doctrines of revelation, might cease to exercise their sacred functions, and mankind be left to the blind impulse of aptite and passion, unrestrained by any law but that of force. Interest, and a regard to reputation, it is true, often impel individuals to the practice of virtue, when purer and nobler motives are unfelt, or disregarded. But the observance of justice and good faith, is equally the interest of nations; and, whatever may be the secret views of crafty and unprincipled ministers or sovereigns, they seldom fail, in all their public declarations, to pay homage to the law of nature and nations, to acknowledge its authority, and to appeal to its principles as the rule

of their conduct. This evinces that the law is not entirely devoid of influence, or, at least, that they are not regardless of the voice of fame, nor insensible to the opinion of the world. Nor can a religious mind divest itself of the belief, that guilty sovereigns, though they may triumph, for a season, in the possession of unjust power, and riot in the spoils of their iniquity, will, sooner or later, meet with the chastisement merited by their crimes. This belief, fortified by the history of political states, furnishes an awful sanction to those principles of eternal justice, which ought to regulate the conduct of nations. In this view, it is of no little moment, that, in all our controversies, we should have law and right on our side, that, if compelled to take arms, in their defence, we may feel the energy of conscious rectitude, and an assurance of the protection of heaven.*

To know our rights, it is necessary to be acquainted with the laws on which they are founded; every inquiry, therefore, which conducts us to a knowledge of those laws, is deserving of attention, and maritime law, which comprehends the principles by which neutral commerce is to be regulated in time of war,

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* Thrice is he arm'd, who hath his quarrel just;
And he but naked, though lock'd up in steel,
Whose conscience with injustice is corrupted.
SHAKSPERE.

merits a distinguished place in the Code of nations. On this subject, HUBNER led the way, and has been the first to bestow upon it that particular attention which is due to its intricacy and importance. There is, however, so much confusion and contradiction in his ideas, and some of his notions are so fanciful, that whatever may be the merit of his work in other respects, it is now little esteemed. GALLIANI and LAMPREDI, two Italian writers, have treated of the rights and duties of neutral nations, in a manner more just and scientific, but not perfectly satisfactory. M. AZUNI is the first person who has digested all the principles of maritime law into a regular system. He appears to have been well fitted by inclination and study, as well as by education and long experience, to execute a work, which required various and extensive learning, sound judgment, and a liberal and philanthropic spirit. His book may, therefore, be regarded as new, and one that bids fair to become a standard authority on all questions connected with the laws of maritime commerce and navigation. The Translator trusts that no apology is requisite for presenting the American reader with a work that contains so full and comprehensive a view of one of the most important objects in the great Code of public law.

The historical survey of the progress of navigation and commerce, and of maritime law, contained in the first volume, will be found instructive, and a suitable introduction to the subjects examined in the subsequent part of the work. In the parallel between France and Great-Britain, in the second chapter, some readers will be disposed to accuse the author of partiality, and, for that reason, may feel a prejudice against his whole performance. This partiality, however, is to be discerned in a few articles only, added to the present edition, printed, during the last year, at Paris, and might have been omitted without injury to the main body of the work, which, except some corrections and real improvements, remains essentially the same, as in the second edition of 1796.

In translating a work of this nature, accuracy was more to be studied than elegance; but while aiming at fidelity, care has been taken to avoid foreign idioms. A nice observer, it is probable, may detect some tinct of the original language; but it is hoped, that this imperfection will be overlooked, if it should seldom occur, and the version, on the whole, be found faithful and accurate. The Translator has taken the liberty of subjoining a few notes, which he flatters himself will not be deemed altogether useless. He would have indulged further in the practice, had he not been re-

strained by the fear of overloading the text, already furnished with ample notes and citations by the author. In works of this kind, notes and references are often requisite to give authority and force to what is asserted in the text. Every reader may not be so fastidious as to despise this shew of erudition, and may sometimes be pleased to find relief from the dry perusal of the text, in a classic allusion, or some lively annotation of the author.

The notes of the translator are distinguished by the marks of reference, (*†‡‖) and by the initial letter T...

WILLIAM JOHNSON.

NEW-YORK, 1806.

THE

AUTHOR'S PREFACE.

I. THE nature and important objects of maritime law, and its relation to the interests of nations, render it the rule of intercourse between governments, and the means of maintaining equal justice in all their political affairs. In this view, and from its close connexion with the universal law of nations, and the conventional law of Europe, it deserves to be studied by statesmen, by publicists, and by all who aspire to the honourable station of public ministers, or aim at a faithful discharge of their diplomatic functions.

II. A work, exhibiting, in a complete and scientific manner, the rights and duties of nations in regard to maritime commerce, has long been wanted. All the writers on public law, however, have uniformly forborn to apply their knowledge and industry to this interesting subject.

III. In an age, when the attention of the the powers of Europe is generally directed towards the progress of commerce, with an energy and perseverance, unknown to former times, it is inconceivable, that not a single writer has attempted to trace out a system of maritime jurisprudence and diplomacy; though all of them, perhaps, have admitted the necessity of legal and determinate rules, by which the rights of nations, in peace and war, may be fixed on a permanent basis.

IV. The interesting parts of the law of nations, which relate to the foundation and sources of national strength and prosperity, have been discussed in their full extent; but the work has been executed, by publicists, in a scholastic manner. They have contented themselves with laying down a few detached principles, which have been attacked by a variety of discordant opinions, for the most part founded on the private interest of this, or that state, or on the particular notions prevailing in the schools, or produced by existing circumstances. The consequence has been, that none of these principles could be reduced to practice.

V. In the course of the present work, I shall have frequent occasion to examine and compare those opinions. It is only necessary to observe, in this place, that they are so va-

rious, that it is difficult, on this subject, to approach the truth, few traces of which are to be found in the writings of publicists. Still, there is a wide difference between a truth faintly seen, and confounded with a mass of bold conjectures, and a truth exhibited in its full and unclouded light. I have thought it my duty to guard, as much as possible, against the influence, which authors, deservedly esteemed by the public, naturally possess over the minds of their readers. With this view, I have first consulted ancient writers, without regarding the commentaries, and explanations subjoined, and which too often pervert the sense of the original text. I have next examined the sources from whence modern publicists have derived their opinions, which I have compared with the principles of that part of the general and conventional law of Europe, that forms the subject of the present work.

VI. It is not enough to point out the errors of writers, unless the causes of error be also discovered. It is requisite to ascend from one cause to another, until we arrive at the first. There is, without doubt, one general and primordial point, from which all the paths which lead to error diverge. Near this point, another may, perhaps, be seen, at which commences the single road that leads to truth. It is this point,

that I shall endeavour to reach in the ensuing work.

VII. Maritime law, and the principles of which it is constituted, are not composed of fanciful opinions, and doubtful systems. This law rests on the general basis of the law of nature and nations, on the positive regulations of the conventional law of Europe, and on those usages, established among nations by necessity, the utility of which has been proved by long experience, and on which time has impressed a venerable character that commands our respect. In this manner, many rules that derive the force of legal authority from the tacit consent of nations, have been insensibly established. It is this tacit consent, that gives validity, and a binding force to the European law of nations.

VIII. The empire of the high sea, the extent of jurisdiction over the parts of the sea adjacent to the shore, the legislation of ancient and modern maritime nations, the rights of belligerents and neutrals, maritime captures, and their adjudication, &c. &c. are subjects which have been treated of by modern publicists; but no writer has yet considered them together in one point of view, so as to form, from the various principles which have been established, a regular and connected system, constituting a permanent and invariable code

of law, to which all might have recourse, in the great variety of cases, and diversity of circumstances, which might arise.

IX. Nations have continued in doubt and uncertainty on these subjects, as much from a fear of injuring themselves as of hurting others. The maritime usages of nations, therefore, have been regarded as a delicate and difficult part of the law of nations, and has remained in its pristine state of doubt and indecision, involved in a chaotic mass of scholastic disquisitions.

X. This evil would not have existed, had publicists, directed by the principles of natural reason, the only guide of nations, examined the spirit of these usages, and traced them to their source. They would, then, have clearly seen their influence on the conduct and policy of nations, and have ascertained the original cause and motive of their adoption, from which might be deduced the degree of their binding force.

XI. The uniformity of the natural and social relations extending to all men, and binding them together in fraternal ties, has proved the absolute necessity of a general society, composed of all the particular societies spread over the surface of the earth. These relations, not founded on special conventions, but upon the eternal and immutable laws of nature, cannot be effaced by particular institutions. All

men are equally destined by their Creator to multiply, until their number is equal to the mass of subsistence, which the country they inhabit is capable of producing.* This universal law, operating with irresistible force, impels them to the continued exercise, and improvement of their intellectual faculties in works of art, to stimulate the earth to perpetual fertility by their labour, thereby to increase its productions, to communicate moral and physical knowledge, to exchange, by means of commerce, the various products of their industry, and, in a word, to endeavour to attain that portion of felicity of which human nature is susceptible.

XII. By the establishment of commerce and exchange, each nation, certain of procuring whatever is necessary to supply its wants, cultivates the earth, and applies its industry to the best advantage. Incapable of living without each other's aid, men are led, by motives of private interest, to cherish reciprocal intercourse, and to form connexions of mutual friendship. In this point of view, the earth may be considered as occupied by one great nation, composed of those smaller political societies, scattered over its surface, though

* See an interesting enquiry on this subject by Mr. Malthus, in his *Essay on the Principle of Population*, 2d edit. London, 1803....T.

infinitely diversified, in their origin, religion, manners, wants, language, colour, and a thousand other circumstances, as various as the different climates they inhabit. Hence, all nations are bound to interchange acts of hospitality and kindness, and to observe that justice, fidelity, and respect towards each other, which are demanded by the interest of the great families of mankind in general, as well as of each constituent part of the national body.

XIII. From the combination of causes and effects, which constitutes the universal law of nature, and from the moral and political organization of the human race, the condition of every individual must influence, imperceptibly, it is true, the condition of mankind in general; much more sensible must be the influence of a whole society on the state of other societies. Hence it follows, that nature has established among nations the same rights and duties that exist between individuals. Thus what constitutes the best possible state of an individual, constitutes the best possible state of a nation. The public, or general interest of a nation is no other than the product of the different interests of its individual members.

XIV. There can be no rights without duties; the last are always the measure of the first. Rights and duties must not be consider-

ed as two parallel lines, which, when extended, never meet: they are, on the contrary, converging lines, which blend, sooner or later, and unite at their intersecting point. Such is the inherent constitution of man, and of the objects that surround him, which it has pleased the Author of nature to establish. Whoever claims to have his own rights regarded, must expect it only in consequence of the obligation he is under to respect the rights of others. A nation, therefore, can rest its right of property on no other solid basis, than that duty which it imposes on itself never to infringe the rights of property in other nations.

XV. All nations are thus strictly bound to cultivate justice towards each other, to observe it scrupulously, and carefully to abstain from every act that may violate its precepts. Each one ought to render to others their due, to respect their rights, and not to disturb the peaceable enjoyment of them. Hence each nation possesses the right of preventing others from depriving it of its property, or prerogatives; for, by so doing, it acts in conformity with its duties, which is precisely what constitutes right.

XVI. For this reason, the property of a nation ought to be considered as a sacred and inviolable right, which cannot be subjected to the laws of a sovereign; for two distinct na-

tions, not acknowledging any superiority over each other, cannot sacrifice their national property to any higher or common interest. Nations are considered as moral persons living in a state of natural liberty and independence. They acknowledge no laws but those of nature, in the decision of their controversies and quarrels. This law of nature, therefore, considered in relation to the interest of states, is called the *universal law of nations*. Its binding force extends over all the nations of the earth. It is immutable, since it is founded on the unchangeable laws of nature. It is the common and necessary law of all the nations of the world, not of any one in particular.*

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* An ingenious and learned writer, *Robert Ward*, esquire, in his work, entitled, *An Enquiry into the Foundation and History of the Law of Nations in Europe*, &c. denies that there is any such universal law of nations, immutable and imprescriptible, binding upon all societies of men. He asserts, that revealed religion, not natural reason, is the only true basis of moral law, and of the law of nature and nations; that this law is applicable only to particular *sets* or *classes* of nations, who admit the same religious and moral systems; that the law of nations, therefore, as established among the *Christian* powers of Europe, can have no binding force on the Mahometan or infidel nations of Asia, or Africa. In the discordant opinions of writers, and the contradictory laws and usages of mankind, he finds a specious ground for his theory; but though it may be true in relation to that part of the law of nations, properly called *conventional*, it would not be difficult to demonstrate, that, in regard to the *law of nature*, his theory is not only unfounded, but of a dangerous tendency. But this is not the place for a discussion of

XVII. It sometimes happens, that two nations resolve to form an alliance with each other, and to establish between them, what is called the *conventional law of nations*, the effect of which, in respect to them, is similar to that of the civil or common law, between two individuals. In this case only, and in consequence of their having so agreed for their common advantage, the right of property in each nation, may experience some infringement; but, excepting this case, there is no other in which it can be impaired, or violated.

XVIII. From the principles thus established, it follows, that the obvious and common interest of all nations, naturally and necessarily leads them to unite and confederate together, in order to strengthen their rights of property, by a kind of universal guaranty. From these primitive rights and duties, are derived the actual rights and duties of nations towards each other. From this clear demonstration of their origin, every mind is disposed to recognise their existence, to form a just

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such extent and magnitude. It might be enough to say, that the position of *Azuni*, is supported by the authority of *Puffendorf, Hooker, Locke, Cumberland, Burlemaqui, Taylor, Butler*, and many others whose names have long been held in the highest veneration for profound and accurate thinking, as well as for great learning and acuteness....T.

estimate of their value, and to be convinced that they are in no degree arbitrary.

XIX. To ascertain the just extent of the authority and binding force of the usages and customs of nations, it is necessary to rise superior to the arbitrary interpretations, contradictions and uncertainties, in regard to the law of nations, which false politics often produce, by considering only the practice and usages of Europe, without investigating the origin and reasons of the law, and without distinguishing the abuses and even infractions of the law, from the law itself. I have found no other way of attaining this end, but by consulting the unalterable principles of universal legislation, and by scrutinizing with severity the controversies of civil societies, in order to ascertain the justice or injustice, legality or illegality, of their usages and customs.

XX. Such, in substance, is the object of this work. I have endeavoured to unfold the principles of the maritime law of Europe, to fix the limits of the legitimate empire of powers on the high sea, and over that portion of it which laves the shores of their respective territories, to give the history of ancient and modern nations who have aspired to the empire of the sea, and to analyse maritime law, from its first origin to the present day. These subjects occupy the first part of this work.

XXI. In the second part, I have treated of the origin and causes of maritime wars, of neutrality, and of the duties of neutral and belligerent nations towards each other. By applying the principles, developed in the first part, to the law of marine captures and recaptures, I have formed a body of elementary doctrines, founded on positive laws, and the principles of natural equity, that will serve for a sure guide in the decision of questions which may arise relative to navigation and commerce, either in peace or war.

XXII. The same subjects have been already discussed by me, in another work, published in 1795, entitled, *Sistema Universale dei principii del Diritto Marittimo dell' Europa;* but the limits prescribed to myself, in that work, did not allow me to investigate the several matters to that extent of which they were susceptible, and which was necessary, in order to reduce them into a system. There is not, therefore, in that performance, that clearness and full explication, which I have endeavoured to introduce into the work now offered to the public, in as complete a manner as my understanding and abilities would permit. May I be fortunate enough to render my efforts useful to nations! May I attain the only end I have in view, the good of my fellow men!

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THE

MARITIME LAW

OF EUROPE.

PART FIRST.

Of the Sea, and of the Rights which may be exercised on that Element.

CHAPTER I.

OF THE EMPIRE OF THE SEA.

ART. I.

Of the High Sea.

§ 1. THERE is not a nobler object, nor one more capable of arresting the attention of man, than a ship under full sail, pursuing her peaceful course over the vast expanse of ocean. At the same time, nothing can more excite apprehension and wonder, than the sight of a ship attacked by tempest, contending against the impetuosity of winds and the violence of waves; yet surmounting, by unshaken courage and skilful manœuvres, all the obstacles which angry nature had opposed to her progress: escaping at last from every danger, the eye is gratified with seeing her enter triumphantly into port. Antiquity, which has enveloped the origin of navigation in darkness and fable, can throw no light on a period so very in-

teresting to naval history. The expedients that nature furnishes to man at every step, and the progress of the human mind, which, in every age, has been able to draw forth the secrets contained in her bosom, will supply conjectures to guide us in our researches on this subject. They will lead to satisfactory conclusions, in support of the fundamental right, equally possessed by all men, to maritime navigation, and to a common participation of the advantages which the free exertions of their faculties may enable them to enjoy.*

2. The roaring of the surge must have been heard by the first inhabitants of the earth, with a mingled sensation of admiration and dread. They must have approached the sea with distrust and with awe. In proportion as the waves became tranquil, their terrors would subside, till, at length, amidst numberless dangers, and, at the risque of a watery tomb, they ventured to brave an element, terrible only at intervals, but presenting in its wide extent, and capacious bosom, vast resources, new productions and new enjoyments.(1)

* The invention of the means of navigation is given to many distinguished characters in antiquity : popular opinion refers it to *Minerva*, who invented so many other things. The idea of the poet *Gessner*, who, in his *First Navigator*, ascribes it to *Venus*, is not the least pleasing. This fiction has been happily introduced into the poem of *Esmenard*, entitled, *La Navigation, Chant* I. published at Paris, 1805.....T.

(1) The history of every age proves, that when men find it difficult to procure the necessaries and comforts of life, nature offers

Origin of the art of navigation.

3. The first who exposed himself to the fury of the sea, and the endless inconstancy of its waves, of whom Horace elegantly says, *robur et æs triplex circa pectus erat*,(2) must have been impelled by want and cupidity.(3) Becoming, at length, familiarised with the rapidity of currents, the violence of winds and storms, the temerity of man knew no bounds. Canoes, made of the trunk of a tree, observed by chance floating on the waves, known among the ancients, under the name of *Monoxylum*,(4) must have been the first means of crossing rivers, and of passing from

them abundant resources in the productions of lakes, rivers, and seas. It may be said also, that the inhabitants of warm climates, enjoy a species of luxury in their pursuits on this element, whose agreeable coolness is so refreshing, under the influence of a burning sun. It is common to see, says TAYLOR, in his *Letters on India*, a savage islander, half plunged in water, his head sheltered with large leaves, and almost without any other covering, encounter alone the dangers of the ocean, in search of that sustenance which the earth refuses to yield.

(2) *Illi robur et æs triplex*
Circa pectus erat, qui fragilem truci
Commisit pelago ratem
Primus, nec timuit præcipitem Africum
Decertantem Aquilonibus,
Nec tristes Hyadas, nec rabiem Noti.
Horat. lib. i. Od. 3.

(3) *Navigandi studium et cursus maritimos in vitam introduxit avaritia; nam ut navigare vellent, ad hoc adegit homines cupiditas adquirendi plura.* Lybanius in progym.

(4) Plato *de legibus*, lib. 12. Pliny *Nat. Hist.* lib. 7, c. 56. Isidor. Orig. lib. 19, c. 1.

one island to another.(5) This first essay naturally led to a further imitation of this sort of natural boat, and to the discovery of the art of constructing others of different pieces of wood, fastened together with strings, made of skins, and with pegs, and arranged in the form of rafts, sufficiently solid and capacious for the purpose of transportation.(6) Emboldened by

(5) *Tunc alnos primum fluvii sensere cavatas :*
Virgil. Georgic. lib. 1, v. 36.

It appears that the ancients made great use of canoes, constructed of the trunks of single trees. Sanchoniathon says, that Ousous, one of the first heroes of Phœnicia, took a tree, half burnt, cut off its branches, and was the first who dared to expose himself upon the water : *Arbore cujus ante ramos amputaverat, navigii loco usus primus sese ausus mari committere.* Vide Euseb. *in preparat. Evangel.* lib. 1, p. 3. A. Vitruvius, *de origine art.* lib. 2, cap. 5. who endeavours to ascend to the first principles of the arts, attributes the birth of navigation to the fact mentioned by Sanchoniathon.

(6) It appeared highly probable, that its structure might be discovered in the raft of Ulysses, mentioned by Homer in the Odyssey, lib. 5, v. 244. and, in fact, it is there described in the most striking manner. Speaking of the raft made by Ulysses in the island of Calypso, he says,

——————— Trees on trees o'erthrown
Fall crackling round him, and the forests groan :
Sudden, full twenty on the plain are strowed,
And lopp'd and lighten'd of their branchy load.
At equal angles these disposed to join,
He smooth'd and squar'd 'em by the rule and line.
(The wimbles for the work Calypso found)
With those he pierc'd them, and with clinchers bound.
Long and capacious as a shipwright forms
Some bark's broad bottom to outride the storms,

experience, the simple ideas acquired of floating bodies, whose specific gravity was less than that of water,(7) having enlarged the understanding of men, they were necessarily led to the construction of larger vessels; rafts were converted into gallies, with many ranks of oars,(8) and at last they ventured to trust themselves to the open sea. These gallies, in the progress of time, were transformed into vessels with lofty sides; in them, men braved the ocean, and from peaceful and timid fishermen, they finally be-

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So large he built the raft; then ribb'd it strong
From space to space, and nail'd the planks along;
These form'd the sides: the deck he fashion'd last,
Then o'er the vessel rais'd the taper mast,
With crossing sail-yards dancing in the wind,
And to the helm the guiding rudder join'd.
Thy loom, Calypso! for the future sails
Supply'd the cloth, capacious of the gales.
With stays and cordage last he rigg'd the ship,
And roll'd on levers, launch'd her to the deep.*

Pope's Translation.

(7) Such is the nature of pine, fir, and alder, which the ancients employed in the construction of their marine.

(8) The Greeks gave to these gallies the name of *Decateperes*, *Decapenteres*, and *Decaexeres*, that is, having fourteen, fifteen, or sixteen ranks of rowers on a side. See the excellent work of M. Le Roi, on the marine of the ancients.

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* This raft, according to the poet, was finished in *four* days, a fact, which, though somewhat improbable, proves Ulysses to have been no less remarkable for his skill and industry as a shipwright, than for his political wisdom.....T.

came audacious pirates, and adventurous navigators.(9)

4. In whatever way the inhabitants of the earth became familiarised with this terrible element, it is certain, that from that time, the high sea presented two great advantages, navigation and fishing, while its coasts afforded various productions and different modes of industry, for the supply of their wants, and a secure asylum in the voyages undertaken on its restless surface.

5. Every nation situated on the borders of the sea, must have soon perceived that it had an equal right to navigation and fishing, and to a common participation of the advantages, which might result from these pursuits. At that period, no limits would be assigned to the exercise of this right, but such as resulted from their situation, their wants, or their industry, or were fixed by nature.

6. The use of the sea is innocent in itself, and injurious to no one; because, it is sufficient for the wants of all, and nature has not given to men the right of appropriating things inexhaustible by

(9) Quintilian, lib. 19, ch. 2. considering rafts as first made use of for navigation, says, "If those who came after the ancients, had done nothing more than to imitate them, we should still navigate on rafts: *Si nemo plus efficiet eo quem sequebatur, adhuc ratibus navigaremus.*"

The use of the sea is common to all mankind.

use, of perpetual duration, and sufficient for all. As each one may find, in a common participation, enough to satisfy his wants, to seize on such things, and exclude others from their use, would be to deprive them, without reason, of the benefits conferred upon all mankind, by the great author of nature.

7. So fertile in resources, so abundant in pretexts, are avarice and ambition, when supported by armed power, that this fundamental truth, on which rests the plan of creation, has not been sufficient to fix the opinions of men, to lead their minds to favourable conclusions, and to such as are agreeable to the institution of the Creator. This truth acquires additional force, from the consideration of the impossibility of taking possession of the high seas. Indeed, from the moment a thing becomes so abundant, that whatever quantity may be taken from it by one, others may still have as much as they desire, it necessarily results that, as each may appropriate to himself the quantity he wants, all the rest may do the same, without injury, and without infringing the rights of any other person.(10)

(10) *Hinc factum ut statim quisque hominum ad suos usus arripere posset quod vellet, et quæ consumi poterant consumere; ac talis usus universalis juris erat tunc vice proprietatis. Nam quod quisque sic arripuerat, id ei eripere alter nisi per injustitiam non poterat.* Grotius de jure belli ac pacis, lib. 2, ch. 2, §2. In this sense, we are to understand the words of Cicero, *de finibus.* 3. *Theatrum cum commune sit recte tamen dici potest ejus esse cum locum quem quisque occuparit.* The same principle is to be found in Seneca, de Bene-

Property in the sea distinguished from that in land.

8. The reasons on which the right of property in land is founded, are not applicable to property in the sea. As the earth, without cultivation, no longer furnished all the productions necessary or useful to the human race, it became requisite to introduce the right of property, that each individual might apply with greater assiduity and success, to the cultivation of the part which had fallen to his share, and to multiply by his labour, the various productions essential to life, and useful to the great body of society. For this reason, natural law, directed by civil laws, has sanctioned those rights of domain and property, which have put an end to the primitive community of goods.

9. The sea was of itself, navigable, anterior to any labour or industry of man. It requires no greater force of wind to carry forward on the ocean all the fleets in the world, than what is sufficient to propel a single vessel. When one ship has passed, the way remains unbroken and not less convenient for those which follow after; so that any number of vessels may set sail at the same time, without impeding the course of each other.*

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ficiis, lib. 7, c. 12. *Equestria omnium Romanorum sunt; in illis tamen locus meus fit quem occupavi.*

* Puffendorf de jure naturæ et Gentium, lib. 4, cap. 5, § 9. *Ut is navigationi sit idoneus nulla quantum ad ipsum mari hominum opera et industria opus est. Eodem labore venti quicquid est ubique navium prodeunt iter. Non deterius patet tibi incontinentem alterum iter, licet cæteri eandem viam usurpent.* The whole of the fifth chapter of Puffendorf, on this subject, deserves to be read.....T.

No nation has an exclusive right to the use of the sea.

10. If, at the present day, a perfect democracy were possible, the sea alone could become the theatre of its existence. Every nation has an equal right to launch it fleets on that element ; there, every man has a right to navigate, to transport the productions of his soil or the fruits of his industry, and to plough the surface of the deep, from pole to pole. Absolute democracy, or, to speak more correctly, a perfect equality of rights on the sea, is the natural state of maritime nations. Whoever seeks to gain an exclusive power there, attempts to erect an absolute monarchy, an organised tyranny, an odious despotism.(11) Maritime navigation, being the free and permanent exercise of the natural and imprescriptible right of the nations of the world, must be common to all. Every maritime power ought to be pacific from principle, and tranquil from necessity. All those powers who have claimed the exclusive empire of the sea, have been warriors from necessity, jealous from pride, tyrannical from system, grasping from interest, and restless from avarice. Europe enjoyed tranquillity, when navigation, protected by the law of nations, was peaceably carried on by all. It has been put into commotion, and inundated with blood, since the Carthaginians, the Romans, the Venitians, Charles V. Holland, and England, have aspired to the empire of the sea.*

(11) See an excellent work of M. Barrere on this subject, entitled, *La Liberté des Mers.*

* The intelligent reader will ask, at what period has navigation enjoyed this undisturbed tranquillity ? And has not the ambition of

The exclusive empire of the sea belongs to no nation.

11. A despotic power over the sea, which belongs equally to every nation, would fetter commerce, and restrain the liberty of all mankind. It would interdict nations from the means of communicating with each other. To subject the winds and waves to the dominion of an exclusive flag, would be committing adultery with,* rather than espousing the sea; it would be seeking an absurd end, by means not less devoid of reason; in a word, it would be the delirium of a nation, mad with ambition, whom it would be necessary to enchain. The different possessors in the same tract of country, have an equal right to the maintenance of order, for the purpose of securing the free exercise of their respective rights within such territory. If that territory is common and indivisible, the right of each individual is founded on the common right. The sea, by its extent and real indivisibility, is intended by Providence to be common to the different nations of the world, to contribute to the wants, the commerce, the well-being, and the prosperity of all who have the means of navigating its surface. With what right, then, will any one pretend to give laws to the sea, and to fetter the commerce of nations?

France, of Austria, of Prussia, also disturbed the repose of Europe, and inundated the fairest portions of that continent with blood? The dire effects of ambition are the same, whether the ocean or the land be the theatre of its influence.....T.

* *Ce serait adulterer les mers.* See article, *Venice, post*.....T.

The injustice of an exclusive commerce.

12. The sea belongs to no one; it is the property of all men; all have the same equal right to its use as to the air they breathe, and to the sun that warms them. Seas are the great highways, traced by nature between the different parts of the world, to facilitate and expedite communication between the various nations who inhabit it. If a nation seizes on these highways, if it arrogates to itself the exclusive privilege of traversing them without opposition, and repels, by the fear of being plundered, all those who wish to make the same use of them, it is no better than a nation of robbers. The liberty of the sea is interesting, not only to nations who carry on commerce in their own ships, but is beneficial to all mankind. All civilized countries, at the present day, have nearly the same habits, the same wants, and require the same articles of consumption. If a nation usurps the whole commerce, it destroys all competition, and fixes, at its pleasure, the price of every commodity. By its arbitrary imposts it draws to itself the riches of every state; the colossus of its own opulence is raised on the common distress and ruin. Such a nation becomes the plunderer and the enemy of the human race.

13. Can any thing be more just, than for the whole world to rise up against a nation that wishes to prevent others from sharing those common advantages, which, by the laws of nature and of nations, belong equally to all? And why may not the same events, the account of which we read in ancient history, again happen at the present day? We behold the an-

All nations should unite against the tyrant of the sea.

cient nations uniting their forces, to avenge an outrage committed against the laws of nature and of nations; for, to claim the exclusive dominion of the sea, is an outrage against both. All should combine their efforts against the usurper. A nation, in a condition to punish a maritime power that attempts to domineer over the sea, and who endeavours by vigorous attacks to restrain such power within just limits, deserves well of mankind; since the necessity of restoring to every nation its rights, is the motive which impels it to action, since its power rests on the general cause which it defends, since its commission is derived from nature, and its right from the absolute wants of the human race. Those nations whose situation does not allow them actively to co-operate, will, at least, indulge good wishes towards another so generous as to attack, even in their harbours, the tyrants of the ocean. It was thus, in former times, that Cimon knew how to expel the Persians from the maritime coasts, and to subject them to such terms as he thought proper to impose, after the battle of Salamis. It was thus, that the people of Argos united with the Athenians to prevent the Spartans, not only from navigating the sea, but even to deprive them of the right of passage. It was thus that the power of the Egyptians was subjected to the pleasure of the Greeks, and they were constrained to sue for the liberty, granted them by treaty, of sending, each year, two vessels beyond the Bosphorus.*

* In the above paragraph, and in some others, to be found in the first chapter of the new edition of his work, our author evidently

Each ought to be content with his own property.

14. The law of nature enjoins us to be content with the acquisition of property sufficient for our own support, and of those who are dependent on our care. If reason and experience admonish us to think of futurity, this foresight should not lead us to indulge ambition and an unjust cupidity, nor to prevent others from providing equally for their own wants. The liberty of navigation and of fishing is derived from natural law, and the law of nations, as well as

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writes under a bias, and with a particular view to existing circumstances.

Themistocles commanded the Grecian fleet at the battle of Salamis. An enlightened advocate of the rights of mankind, would hardly recommend the conduct of the Athenians, as a maritime power, to the imitation of nations at the present day. The establishment of the naval power of Athens was, no doubt, the principal means of her salvation from Persian tyranny. Her efforts to maintain her liberty and independence against foreign invasion, are deserving of our admiration. But in her conduct towards the Grecian states and cities, we discern nothing worthy of praise. In the instances cited by our author, she transcended the bounds of moderation and justice, and violated the principles on which the freedom of navigation and commerce is founded. In fact, the Athenians no sooner felt the greatness of their maritime power, than they became intoxicated by it. It was converted into the instrument of unjust ambition and boundless rapacity. Their naval commanders, dispersing themselves over the sea, laid waste and plundered defenceless towns, and brought home their spoils in triumph to Athens. Friends and foes, allies and neutrals, were equally a prey to their lawless depredations. Themistocles himself, once proposed, in an assembly of the people, to burn the fleet of their allies, then lying without suspicion in the port of Pagasæ, and thereby to render themselves masters of Greece. The opinion of Aristides, and some sense of justice in the people, alone prevented its adoption.....T.

The high sea is as free as light and air.

from the civil law. For these reasons, the high sea ought to remain as common to the human race as air and light.(12) The use of those elements, unquestionably, can never belong to any one nation, to the exclusion of others.(13)

15. From these principles, it follows, that the right of prior occupancy cannot give to a nation the absolute empire of the high sea, and for the reason already mentioned, that this element is not susceptible of

(12) *Et quidem naturali jure omnium communia sunt illa, aër aqua profluens et mare. . . . . quia non sunt jure gentium sicut est mare.* Dig. lib. 1. tit. ix. l. 2, 4.* *Mari quod natura omnibus patet servitus imponi privata lege non potest.* Dig. lib. 8. tit. iv. l. 13. *Maris communem esse usum omnibus ut aëris.*

(13) Instit. lib. 11. § 2. *et* 10. Dig. lib. 47. tit. 10. l. 13. § 7. Id. lib. 43. tit viii. l. 2. § 9.—An elegant passage of Petronius, ch. 10, may be here cited: *Quid autem non commune est quod natura optimum fecit? Sol omnibus lucet. Luna innumerabilibus comitata sideribus etiam feras ducit ad pabulum. Quid aquis dici formosius potest? In publico tamen manant.* Vid. Noodt. probat. juris, lib. 1. cap. 7. So Ovid, Metamorphose 6. l. 349—

Quid prohibetis aquas? Usus communis aquarum est,
Nec solem proprium natura, nec aëra fecit,
Nec tenues undas. Ad publica munera veni.

And Virgil. Æneid. 7. l. 229.

——————— *littusque rogamus*
Innocuum, et cunctis undamque, auramque patentem.

* Azuni follows the very inconvenient and pedantic mode of quoting the civil laws, which prevails among the writers of the other continent, referring only to the number of the law, and giving the first words of its title. By searching the general index, in some editions, the book and title may be found, but to save the reader that trouble, a different reference is substituted.....T

A nation may renounce its maritime rights.

individual appropriation. If it were otherwise, the grand Seignior, in quality of sovereign of Phœnicia, might claim to be the proprietor of every sea, as having succeeded to the right of the Phœnicians, who were the first navigators with whom history has made us acquainted.

16. In order that the empire of the sea may belong to any particular nation, it is necessary that all others should renounce the rights of navigation and fishing, which nature has conferred equally on all mankind. By this means, only, by the general consent and agreement of all sovereign and independent societies, can the sea become the *apanage*, or, if we may be allowed the expression, the dower of such fortunate nation. In this manner, mankind may be supposed free to renounce the liberty of the sea, or to cede it to a single nation, who may give an equivalent for the possession, or leave it in its ordinary state, so that it may be enjoyed equally by all, as it is, in fact, at the present day.

17. In the first case, the empire of the sea would, undoubtedly, be in the hands of a single nation, to the exclusion of every other ; but in consequence only of an agreement or universal compact of the human race, and not by force of natural law. Other nations may, in like manner, divest themselves of the free exercise of the rights of navigation and fishing, of which the one in possession will become the absolute master. But as such a compact never has been,

and never will be made,(14) we must conclude, that such an exclusive right, as is here spoken of, exists only in the region of possibilities, and that, consequently, the sea must remain, as in the second case, free, and for the common use of all nations.

18. A *nation*, it is said, according to Montesquieu, may *cede the sea to another, in the same manner as it has ceded land.* If this maxim, laid down by a great writer on public law, were true, and conformable to principles of natural law, the treaty which terminated the first Punic war would cease to be the disgrace of Rome: we could no longer blame the insulting pride of Carthage. Those two republics divided universal empire between them, while an oppressed world stupidly gazed at the progress of their power. This act of political violence exercised against the rights of nations, has deceived Montesquieu, whose genius was often led astray by historical facts.(15)

(14) It has been often repeated, that the right of the strongest, at all times, gives the sovereignity of the sea. No other reason can be alleged in support of this claim, until we can produce either a formal renunciation by other powers of their sacred and unalienable rights, or a clause in the will of Adam, by which he bequeaths to the power arrogating that sovereignity, the fluid part of the globe, to the prejudice of the other children of this common father of the human race.

(15) See Barrere, in his Essay *de la liberté des mers*, tom. 1, in which he says, "If any nation can cede the empire of the sea, another nation may conquer it; the force of the one would then be as legitimate as the injustice of the other."

One nation has no right to prohibit another from the use of the sea.

19. When one nation, under the pretext of an exclusive commerce, prohibited others from navigating a certain part of the sea, or from approaching certain coasts; such prohibition was regarded by them, as the offspring of vanity, originating from the abuse of momentary power, rather than from deliberate reason, or any right founded upon principles of universal justice. In truth, it must be considered as an infraction of the social compact, and a manifest violation of the most sacred rights of humanity. For this reason, such an exclusive claim has been disregarded, or has become the source of enmity, and the just cause of war. Thucidydes(16) gives us, on this subject, the example of the Athenians and Megareans; Sigonius,(17) that of the Bolognese and Venetians, and Francis Victoria,(18) that of the Spaniards and Americans. In support of the same principle, we may cite what Virgil(19) has said, in speaking of the opposition, made by the Carthaginians, to the landing of the Trojans on the coast of Africa.

Quod genus hoc hominum, quæve hunc tam barbara morem
Permittit patria? hospitio prohibemur arenæ;
Bella cient primaque vetant consistere terra.

(16) *Thucidydes Hist.* lib. 1.

(17) *Sigon: de rer. Ital.* lib. 20.

(18) *Franc. Victoria.* de Indiis tract. 11 § 2, 3, et 4.

(19) Eneid. lib 1. l. 539.

What are the customs of this barbarous place?
What more than savage this inhuman race?
In arms they rise and drive us from the strand,
From the last verge and limits of the land.....*Pitt.*

The maritime power of nations is not equally balanced.

These nations, as it happened, were obliged patiently to suffer others to navigate the same parts of the sea, to land on the same coasts, and to carry on there, a commerce agreeable to the inhabitants.

20. Wars have, for a long time, been undertaken solely for the purpose of maintaining an equilibrium between the continental powers. All treaties bear the impression of the political balance. The rest of the world have been, constantly, compelled to restrain great nations, who have attempted to encroach on their rights by the aid of armies, to which they were unable to oppose an equal force; but nothing has yet been done to circumscribe within just limits those maritime powers who, to the prejudice of others, have transgressed their proper bounds. In all ages, mankind have been so blind, as to allow a single nation to assume the exclusive empire of the sea, and thus to violate the imprescriptible rights of nature and of nations. If the naval forces of each nation had been proportioned to its fortune, and to the extent of its maritime territory; if the military marine of each state had been limited by a general law, guaranteed by the forces of all the other maritime powers; if naval armaments had been commensurate only with the necessity of natural defence, and adapted to the circumstances of each government, the world would not have experienced, in every age, those political concussions, for the sake of compelling an usurping power, which tyrannises over the ocean, to descend from that colossal grandeur which provokes the rest

The evils which flow from maritime ambition.

of the world to overthrow it. Whether it be the intention of the author of nature to punish governments and men who overleap the barriers of the ocean, or that the passions of avarice, ambition, and the love of conquest, are necessarily the first fruits of military navigation, it is certain, that the most formidable plagues which have desolated the earth, have proceeded from maritime power. Whenever this power has become exclusive, its destructive effects have been oftener and more severely felt by the nations of the world.

21. When mad ambition has proclaimed the proud pretension to deprive nations of the common right of the human race to the peaceful navigation of the seas, it has been followed by every crime. Happily for mankind, this exclusive maritime empire, after oppressing the nations who have suffered its existence, has destroyed those by whom it has been usurped. No power, no state, however formidable, can give law to Europe; much less to the general mass of nations.(20) Carthage carried on all the commerce of the known world : she turned to her own profit the riches of other nations ; she kept a large number of foreign troops in pay ; she equipped powerful fleets ; her merchant-ships covered the seas, whose dominion they claimed ; and while, with one hand, she held the ocean in chains, with the other, she shook into commotion the nations of the earth.

(20) *See* Barrere *de la Liberté des Mers*, tom. 1.

Fatal effects of the sovereignty of the sea.

22. " I am of opinion," says Isocrates, " That it " would greatly contribute to this end, (the happi- " ness of the state) if we laid aside our ambitious " claim to the sovereignty of the seas. It is this " which formerly dissolved the government of our " ancestors, the happiest that was ever devised, " which now involves us in much confusion and dis- " tress, and which, in one word, is the occasion of " all the calamities we have either suffered, or in- " flicted."

" Hence," he adds, " it is most evident, that " though no nation can boast of better men than our " own, yet this command of the seas which we af- " fect, and term a sovereignty, though it be more " properly named a misfortune, is sufficient to bring " indiscriminate ruin on all who possess it."—— " They (the Lacedemonians) were unacquainted " with the dangers attending the superiority of mari- " time power; they knew not that it deprives such " as are intoxicated with it of the use of their facul- " ties, and, resembling the nature of harlots, first ex- " cites the desires and passions of men, and afterwards " converts them into instruments of destruction."

" Odious to our allies, placed on the verge of " slavery and destruction, we were saved by the La- " cedemonians. They, in their turn, after exciting " the resentment of all their neighbours, and when " the collected storm was ready to overwhelm them, " fled to Athens for protection, and there alone ob-

The sovereignty of the sea, fatal to those who possess it.

" tained it. Who then would covet a superiority, " the consequences of which are so dismal? Who " would not rather avoid and detest what both se- " duces to uncommon guilt, and subjects to inevita- " ble punishment."*(21) The ancients, accurate and clear-sighted observers, had foreseen that a power, founded on an armed naval force, by which death and destruction could be carried into every quarter, would generate a pride, that would, eventually, grow into intoxication and madness.

23. Every government, like every individual, has its evil genius, which impels it, sooner or later, to the commission of irreparable faults. Sovereigns are, often, in the language of the poet,

> Frappé de cet esprit de vertige et d'erreur,
> De la chute des rois funeste avant-coureur.†
>
> With madness struck, before their fatal hour,
> The dire precursor of their fall from pow'r.

The exclusive empire of a common element, possesses nothing durable. Of all forms of ambition, that

* The more correct and elegant translation of Dr. Gillies is here used, instead of following the loose and inaccurate version of the French.....T.

(21) Isocrates, *de Pace.*

† Racine's *Athalie.*

The same sentiment is contained in a line of *Apuleius.*

Quem deus vult perdere ille prius dementat.

The worst consequence is, that the people suffer for the follies of their rulers.

Quicquid delirant reges plectuntur Achivi.—Hor. Epist. lib. 1. 2.....T.

of ruling over the sea is the most wild; for the lines of dominion and the bounds of property, are, alternately, broken by the vessels of other nations, and continually effaced by the fleets moving over its surface. This sceptre, illegitimate, because it is usurped, is broken against the smallest rock, and soon buried beneath those independent waves over which it tyrannised. In all times, among all nations, in every climate, unjust power has been precarious and unstable. The laws of equity and peace, have a direct tendency to the preservation of the rights and benefits of society. Every invasion of the property of another, every law of force, necessarily draws after it its own destruction. Ambition produces usurpers and tyrants; and tyranny calls for vengeance. In all ages, oppression has been the principal cause of the destruction of empires, founded by injustice and usurpation.

24. It is the right, it is the duty of all nations, to arm themselves against the universal oppressor; to shake off, and break for ever, the yoke of a tyrant, who wishes to hold in chains, the seas, the commerce, and the industry of all nations. Justice has its invariable laws; oppression ought to have its limits. When it arrives at its height, it should be overthrown. Thus, the pride and cupidity of Carthage were expiated by its degradation. Its splendour was followed by humiliation, and that fear with which, by the force of her numerous fleets, she overawed the

The destruction of Carthage caused by avarice and ambition.

world, was succeeded by contempt. She wished, in vain, to protract the last moments of her credit and renown; the day of vengeance had arrived. The Carthaginians, invincible abroad, were destroyed in Carthage, by Agathocles and Scipio. Her name, her tyrannies, her spoliations, the insolent speeches of her generals, the outrageous pretensions of her negotiators, have been transmitted to posterity, who are happy in being unable to discover where are now the ruins of that proud city.* The same giddy spirit of ambition, induced the different nations of Greece, in their turn, to believe, that they might retain and preserve the maritime empire which they had usurped; but let us cast our eyes towards the wrecks of so many once flourishing cities and kingdoms.

In the following sketches, will be seen the consequences of this mad pretension, such as they are presented in the history of every nation that has attempted to arrogate to itself the empire of the seas.

* Did the destruction of Carthage by a haughty and implacable rival, produce any benefit to other nations? They were subjected to the domination and oppression of another power more irresistible, and not less rapacious.

There are many readers who will question both the justice and the policy of the measure, and who prefer the moderation of Scipio Nasica, in the memorable debate on this subject in the Roman Senate, to the stern and unrelenting severity of Cato.....T.

ARTICLE II.

Of the ancient States who have claimed the Empire of the Sea.

§ 1. CLAIMS to maritime empire are of very high antiquity. Eusebius has transmitted to us a chronological series of nations, who, at different times, and for certain periods, antecedent to the famous battle of Salamis, have been considered as possessing the empire of the sea ;(22) but they are indebted for this reputation, to their having rendered themselves formidable, by their piracies, carried on in particular parts of the Mediterranean. From the false ideas that men always form of audacity and strength, those nations have even derived glory from their predatory excursions.(23) Many other nations have, in their turn, disputed the empire of the sea, and its waves have often been tinged with the blood, which the unbridled ambition of ruling over that element has caused to flow. We shall pass rapidly over the different ages of the world, and observe what nations have acquired this ascendancy.

(22) Eusebius in Chronic. lib. 2. Appollod. lib. 2. Plin. hist. nat. lib. 7. cap. 56.

(23) *Latrocinium maris illis temporibus gloriæ habebatur.* Justin. hist. lib. 43. cap. 3. οὐκ ἔχοντός πω αἰσχυνην τοῦτου τοῦ ἔργου, φέροντος δέ τι καὶ δοξης μαλλον—Thucydides, lib. 1. § 5. *This occupation, instead of being regarded as disgraceful, was considered as reputable.*

Tyre.—The Phœnicians the first naval power.

Section I.

TYRE.

§ 1. THE Phœnicians, known in the sacred writings, by the name of Canaanites,(24) a word that, in the oriental language, signifies *merchants*,(25) so much excelled in the knowledge of naval affairs, that the invention of a marine, according to Catullus, has been ascribed to them.

Prima ratem ventis credere docta Tyrus.

Inhabiting the coast of the Mediterranean, from the island of Aerad to Mount Carmel, they were ad-

(24) The only name under which the Phœnicians were known, in the early ages, and particularly by the sacred writers, is that of Canaanites. They are so called by Solomon, in Proverbs, ch. 31, v. 24. This appellation was preserved, for a long time, by the Phœnicians, in their colonies. Those who were established on the coast of Africa, called themselves by that name, in the time of St. Augustin, that is, in the fifth century of the Christian era. *St. Aug. expos. inchoat. epist. ad Rom.* The name of Phœnicians, found among prophane authors, was given to them by strangers. Sanchoniathon, in a fragment of his writings which remains, mentions that *Chna* (which is an abbreviation of *Canaan*) is their original name, and was afterwards changed to Phœnicians. The strangers who made this alteration, were, probably, the Egyptians ; but it has had the effect to make the ancient name forgotten. Vid. *Eusebius prepar. Evangel. lib.* 1, *c.* 9. See also the learned observations of Abbé Barthelemi, in his first letter on some Phœnician medals, inserted in the *Journal des Savans*, for the month of August, 1760.

(25) *Braun, de Vest. Sacord. hœbreor. p.* 251.—*Hist. Universelle, tom.* 1. *p.* 219.

vantageously situated for extending their commerce over this sea. Every thing invited them to become navigators. Inspired by that creative genius, which, from a horde of savages, made them, after a few ages, an illustrious nation, they invented, in the course of a few generations, many new arts, and considerably extended the ancient limits of Phœnicia.(26) Commodious harbours offered them a safe asylum for their vessels, and Mount Lebanon furnished the timber requisite for building ships. They profited so well by these advantages, that, if they were not the inventors of navigation, they were, at least, the first people who made long voyages, and armed their ships for war. Interest and ambition conspired to render them the most celebrated navigators of ancient times. They visited, in turn, Sicily, Sardinia, Greece,* Gaul, and Spain. Another sea soon became necessary to gratify their ambition ; they bold-

(26) According to *Strabo,* in his geography, lib. 16. Phœnicia comprehended the whole maritime coast from Onthosius to Pelusium. Procopius *de bello Vand. lib.* 11, *c.* 10, calls all the country, from Sidon to the confines of Egypt, Phœnicia. This leads us to suppose, that the Philistines were incorporated with the Phœnicians, and took their name. Herodotus, lib. 1, p. 59, calls the inhabitants of Askalon, which was one of the cities belonging to the Philistines, Phœnicians; their other cities, without excepting Rhino-colura, are also denominated by ancient historians and geographers, cities of Phœnicia. *Dionys. Perieg. v.* 905—910.

* " *Phœnices primi mercaturis et mercibus suis avaritiam, et magnificentiam, et inexplebiles cupiditates omnium rerum supportaverunt in Græciam.*" Fragmenta Cicer.....T.

Progress of the commerce of the Phœnicians.

ly passed the columns of Hercules, and their courage was rewarded by the discovery of Great Britain.(27)

2. The countries frequented by the Phœnicians, were almost all, which composed the ancient world, during the second period of history, that is, from the reign of Sesostris to that of Cyrus ; a period, during which the east and the south were as well known, as the west, in a subsequent age. The Phœnicians, treading in the steps of the conquerors of the immense regions of Asia and India, established their commerce, by means of their navigation, in all the places over which those great monarchs extended their dominion.(28) Egypt itself, which continued for a long time, as impenetrable to strangers as China, was accessible to the Phœnicians. Ships bearing

(27) *Eusebius in Chronic. lib.* 2. *Diodor. lib.* 5, *p.* 346. *Strabo. Geog. lib.* 1, *page* 85.

(28) Robertson, in his History of America, in mentioning the reasons which induced him not to doubt of the voyage, made round Africa by Necho, king of Egypt, about the year, A. M. 3100, and 904 before Christ, supposes this monarch employed the Phœnician crews to man his fleet.* See also on this subject an interesting pamphlet, by M. Chapus, member of the legislative body, entitled *Histoire abregée des Revolutions du Commerce*, ch. 8.

* The date here given, is evidently erroneous. Robertson says, " A Phœnician fleet, we are told, fitted out by Necho, king of Egypt, took its departure about 604 years before the Christian era, from a port in the Red Sea, doubled the southern promontory of Africa, and, after a voyage of three years, returned by the streights of Gades to the mouth of the Nile."....T.

their flag, might ascend the Nile, by one of its mouths, and their merchants occupied a quarter of the city of Memphis, in the vicinity of the Temple of Vulcan, called the *Tyrian Canton*, from the name of Tyre, their chief city.(29)

3. By means of their extensive commerce, and their skill in navigation, they at length acquired the empire of the sea, which they long retained. They became, however, the tyrants of the ocean, and exercised piracy, until their dominion was annihilated by the most dreadful catastrophe. Nebuchadnezzar, king of Babylon, marched against Tyre, about the year 580, before Christ, and, after a siege of thirteen years, made himself master of the city.(30) The conqueror, irritated at so long a resistance, exterminated every thing by fire and sword, and destroyed the city to its foundations.

4. Re-established under Cyrus, and more splendid than ever under the kings of Persia, Tyre paid dearly for arresting the march of Alexander the Great. A murderous siege transformed it into a heap of ruins. From the dominion of the kings of Syria, successors of Alexander, it passed under that of the Romans. Their empire, mild and tranquil, was favourable to commerce. Tyre took advantage of this circum-

(29) See an excellent work by Mr. Peuchet, entitled, *Recherches sur l'etat et les progrés* du commerce et de la navigation *des anciens*, inserted in the *Bibliotheque Commerciale*, Sept. 1803.

(30) *Joseph. Antiquit.* lib. 10, cap. 11.

stance to raise herself to her former greatness; to reassume her glory, and to become the principal city of Syria. In the ages which followed, she experienced, under the Saracens, and the Christian princes, the same alternations of prosperity and adversity. She has undergone, at last, the fate of all the ancient cities which have fallen under the Turkish yoke; exhibiting nothing but a heap of ruins, and of huts occupied by miserable fishermen. A melancholy fate! the sad fulfilment of the prophecy of Ezekiel.(31)

Section II.

ÆGINA.

§ 1. ÆGINA, a considerable island, is situated in the Salonic Gulf, near the port of Pireus, and not far from Salamis, illustrious for the famous victory of the Greeks over the Persians. A tradition, mentioned by Hesiod, confers on it the honour of having invented the art of navigation. The Æginetes, in the reign of Darius, son of Hystaspis, having rendered their island the centre of the commerce of all Greece, by their attention to the maintenance of a large naval force, were considered as the most powerful

(31) "And they shall destroy the walls of Tyrus, and break down her towers; I will also scrape her dust from her, and make her like the top of a rock. It shall be a place for the spreading of nets in the midst of the sea; for I have spoken it saith the Lord God; and it shall become a spoil to the nations." Ezekiel, ch. 26, v. 4 and 5.

maritime people of that age.(32) They distinguished themselves in the wars against the Persians, and earned the palm of valor. For this reason, they have been ranked among those nations who have, for a time, held the empire of the sea.(33) The part which they performed in Greece, was as short as it was brilliant. They were able to maintain themselves, for a short time only, in opulence and prosperity. Driven out of the island by the Athenians in the time of Pericles, the Æginetes never recovered from their fall.(34) Their naval power was entirely destroyed, and their commerce annihilated.(35)

Section III.

CRETE.

§ 1. MINOS, the second of that name, king of Crete, who took such sanguinary vengeance on the Athenians for the murder of his son Androgeus,(36) has been regarded as the first sovereign of that country, who held the empire of the sea.(37) But this empire, for which he has been so much honoured by historians, must be confined to the superiority Minos enjoyed in the seas of Crete, and of the adjacent islands.

(32) Strabo. *Geog.* Herod. *Hist.* lib. 5. Plutarch *in Themistoc.*

(33) Strabo. Ælian *var. Hist.* lib. 12, c. 10.

(34) Pausan. *in Corinth.*

(35) Ælian. *in loc. cit.* Strabo. *loc. cit.* Thucyd. *Hist. lib.* 1.

(36) Plato *de legibus, lib.* 4.

(37) Thucyd. Hist. *lib.* 1. Herodot. *lib.* 3, *n.* 122. Aristot. *de repub.* lib. 2, c. 10. Diod. lib. 4. Strabo *loc. cit.*

Maritime power of the Cretans: its final destruction.

Having become the most powerful in those places, by the great number of his ships, he was soon able to equip a naval force sufficient to clear the seas of the pirates who infested them, to seize on the neighbouring islands, become their legislator, and transmit the government of them to his children.

2. After the abolition of the monarchy, there remained, among the Cretans, no union to constitute a national body. National wars with the neighbouring islanders, seldom occurred; and when they sallied out from their own island, for the purpose of attack or defence, it was always in single vessels, and not with fleets, as would have been the case, if the people had been connected by the ties of common interest. The Cretans appeared, at length, to prefer a piratical warfare to every other. They infested the Mediterranean, and harrassed navigation to the very coasts of Italy. Such conduct furnished the Romans with a pretext for attacking Crete, at that time perfectly independent. They subdued the island, changed its government, and reduced it to a province of the empire. The Ottomans, who, in almost all the islands in these seas, succeeded the Romans, have become masters of Candia, which they easily snatched from the hands of the Venetians.

Section IV.

RHODES.

§ 1. THE fortunate position of the island of Rhodes, the excellence of its harbours, and the fertility of its

territory, created in the inhabitants an attachment to commerce, and to a marine, which they, for a long time, cultivated with the greatest success. Profiting by the advantages they enjoyed, they established a maritime empire, more real and absolute than that of any other nation of antiquity, all of whom imagined themselves the masters, because they were the tyrants of the sea. Less desirous of destroying, than of defending the liberty of others, by means of that honourable preponderance which they had acquired in the Mediterranean, the Rhodians became the protectors of nations they might have enslaved. It is not without reason that Florus calls the inhabitants of Rhodes a *nautical people*,(38) and that Eusebius terms them the *masters of the sea ;*(39) for the naval laws they promulgated are so full of wisdom and equity, that they have served for the maritime law of nations throughout the whole extent of the Mediterranean. Rome herself respected them ; following, in this instance, a wise practice, of adopting whatever she found excellent among foreign nations.(40)

§ 2. At Rhodes, the Romans were regarded as members of a common family. They assembled there, when expelled from Asia by Mithridates, king

(38) Florus *Hist. lib.* 2, *cap.* 7. *Populus nauticus.*

(39) Eusebius *in Chronic. lib.* 2.

(40) See what is said on the Rhodian Laws, in chapter 3, article 2, of this volume.

Conquest of Rhodes by the Romans, and its final ruin.

of Pontus. That prince would have made some illustrious prisoners, could he have forced the city to surrender, when he laid siege to it: but he met with an obstinate resistance, as well from the inhabitants, as from those who had taken refuge there, who fought as for their common country. This fraternization, however, was injurious to the Rhodians, since they were not allowed to remain neutral in the domestic dissensions of their allies. They took part with Pompey, and, afterwards, with Cæsar. They defended themselves with courage against Cassius, the assassin of Cæsar, and engaged in two battles, in which they lost the greater part of their vessels. The city was treacherously opened to Cassius, who stripped it of its most sumptuous ornaments, punished the principal inhabitants, and exacted from them heavy contributions. Marc Anthony restored to Rhodes its privileges, and annexed to it some adjacent islands, as a part of its territory. The Rhodians, such zealots for liberty, so oppressed these different dependencies with taxes, that the Dictator was obliged to restore them to their former state. Vespasian imposed a tribute on Rhodes, which, from the sovereign, became merely the capital of the islands in the Mediterranean, subjected to the Roman power. She afterwards recovered her independence for a short time: but the Ottomans destroyed it for ever.

Section V.

PERSIA.

§ 1. DARIUS, son of Hystaspis, seated on the throne of Cyrus, had little else to engage his attention, than the restoration of what Smerdis, the usurper of the kingdom, had destroyed. Desirous of inflicting vengeance on the Athenians and Cretans, who assisted the revolt attempted by the Milesians, under the direction of Aristigonus, he sent against them an army of 600,000 men, and a fleet of 600 ships, furnished by the Phœnicians, the Egyptians, the Cypriots, and the Ionians. The disgraceful loss of the battle of Marathon, did not discourage him; he made new preparations against Greece. Darius died without executing his project, and Xerxes inherited his vast dominions, and his boundless ambition.

2. Xerxes, while he menaced the liberty of Greece, was so elated with the great army with which he had determined to attack it, that having met with a storm, he treated the sea as a rebellious slave. He ordered it to be scourged with three hundred strokes of the whip, and chains to be thrown into it. The battle of Salamis cured him of his madness,(41) and overthrew the maritime forces of the

(41) The immense fleet of Xerxes was beaten at Salamis by the combined fleet of the Greeks, consisting only of 300 vessels. The Greeks, without doubt, owed their victory, in some degree, to their

Disgraceful retreat of Xerxes out of Greece.

nations he had brought with him, for the conquest of Attica and the Peloponnesus.(42) Thus, after having enchained the waves, cut through mountains, filled up vallies, drained rivers, covered the sea with vessels innumerable, and led on millions of men in his train, he found himself alone, abandoned, trembling, and happy to find a fishing boat, in which to recross the Hellespont. His retreat from Greece was as humiliating, as his entry had been formidable and haughty. He signed a treaty, which fixed the coast of Pamphylia, as the limits for the navigation of his subjects. Thus, for the first time, we behold the freest nation in the world, exercising a despotism over the sea, to which the most absolute monarch was forced to submit.

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remaining in a narrow strait, where a great number of ships were not only useless, but a hindrance to each other. Yet the great part of the glory of that day, may be fairly attributed to their courage and experience in naval combats. The Greek vessels were manned by fighting men; those of the Persians, with merchant-sailors, excellent navigators, indeed, but little acquainted with the science of naval tactics.

(42) Authors are not agreed as to the number of naval forces employed in this famous expedition. If we may credit Herodotus, the Persian fleet consisted of 1200 sail, besides transports: three hundred of Phœnicians, and Syrians of Palestine, two hundred Egyptians, fifty from the isle of Cyprus, one hundred from Cilicia, thirty from Pamphylia, fifty from Lycia, one hundred from Doris, seventy from Caria, one hundred from Ionia, seventeen from some small islands, sixty from Æolia, and one hundred from the coasts of the Hellespont and the Euxine.

3. The battle of Salamis was followed by that of Platæa, and of Mycale. The loss of these three battles, was a most dreadful stroke to the Persian power. The Athenians, masters of the sea, delivered Cyprus, Thrace, Macedonia, and the Chersonesus, from the yoke of the Persians. Soon after, under the command of Cimon, they drove the Persians out of Ionia, and burnt or sunk all the vessels of the great king.

Section VI.

GREECE.

§ 1. GREECE is bounded on the east by the Propontis and Ægean sea, on the south by the Ionian sea. It is almost divided by the Corinthian gulf, and is surrounded with islands not far from the main land, and at a short distance from each other. The necessity of mutual intercourse felt by the inhabitants of the continent, and the islands, and a desire to exchange the productions of their respective countries, prompted them, at an early period, to devote themselves to navigation.

2. Lively and enterprising, the Greeks have so highly cultivated the arts and sciences, that we always turn our eyes, with pleasure, to a region from whence we have derived so much intellectual light. After the brilliant victories gained over the Persians, they neglected nothing to maintain their superiority at sea. Obstinate and self conceited, they were more

Athens and Lacedemon, rivals in maritime power.

desirous of exciting the attention and admiration of other nations, than of acquiring subjects. Too jealous of one another, to enjoy in common the fruits of their success, they became a prey to the most cruel dissensions. The Athenians, persuaded that they owed the preservation of their country to their marine, resolved to keep up their maritime forces. Themistocles pursued the wisest measures to augment them; and Aristides having become their leader, gained for his countrymen, the empire of the sea, of which the Lacedemonians had, hitherto, been in possession. The latter saw, not without jealousy and anxiety, the rapid increase of the maritime power of the former, and the extension of their empire over the Ægean and Ionian seas.

§ 3. These two rival republics, so different in their manners and customs; one distinguished for politeness and luxury, the other for the severity of its government; one engaging our affections, the other extorting our admiration, were often at war with each other. The Athenians would, probably, have maintained their maritime preponderance, for a much longer period, if the Lacedemonians, forgetting the principles of Lycurgus, their illustrious legislator, had not resolved to secure their empire on land by that of the sea.(43) But Sparta, herself, would never have

(43) Cragius, *de repub. Lacedemon. lib.* 3, *c.* 4, pretends, that Lycurgus had positively forbidden the Spartans to build vessels, or to maintain seamen; but there is little probability that any person

Athens taken, and its naval power destroyed.

been able to execute so great a scheme, had it not been for the blind ambition of the Athenians, which impelled them to the unfortunate expedition into Sicily, attended with such disastrous consequences to their power. The Lacedemonians took advantage of the distress of their rival, attacked her, and captured eighty vessels. They soon laid siege to Athens in form, forced it to surrender at discretion, and to open its gates to the conquerors, who demolished its fortifications. Conon, by rebuilding the walls of his country, could not restore her maritime power. The Spartans who, with the aid of the Persians, had destroyed it, were unable, in their turn, to preserve their own power, when their allies ceased to supply them with ships and money.

4. The Lacedemonians, after Athens was thus humbled, took their place among the number of those nations who have exercised an absolute despotism over the Mediterranean sea. Alcibiades, by an insidious policy, under the pretext of opening to them the road to fortune, led them to ruin. When he took refuge at Lacedemon, he advised the kings, the

would have thought of making such a law in a country like that of Laconia, where there were, at least, fifty maritime towns, and which, if prohibited from fishing, and from the commerce of Asia, Africa and Sicily, would have been deserted. Independently of this consideration, the pretended prohibition of Lycurgus is contradicted by an infinitude of facts; for history informs us, that the Lacedemonians always had armed vessels; and that in the time of Crœsus, they landed troops in the isle of Samos, to which they had been attracted by the desire of plunder.

Maritime despotism of Sparta, destroyed by Conon.

ephori, and the people, to augment their marine, and to put themselves in a condition to compel every other flag to do homage to theirs, and to become, at length, real *Thalassocrates*, or rulers of the Grecian seas.(44) We feel hatred towards the Spartans for their pretending to rule over the continent; but we detest them still more, when, by the perfidious counsel of an Athenian, they attempted to become the tyrants of the waves.

5. Pride, and the abuse of prosperity, that caused the fall of Athens, soon made their insolent rival experience the same fate. The empire of the sea, which Lacedemon had acquired at the battle of Egos-Potamos, by the talents of Lysander, was annihilated, ten years after, at the battle of Gnidos, when Conon totally destroyed her fleet and naval forces. All subsequent efforts to re-establish her marine, were ineffectual; for, at the time she was incessantly occupied in its restoration, her land forces were entirely destroyed by Epaminondas. Lacedemon was soon afterwards plunged into the lowest abyss of misfortune, till, at length, she was exterminated by the dreadful tyranny of Nabis; a scene that forms the most hideous picture in the history of expiring Greece.

6. The fall of these two republics, changed the face of Greece. The fortune of Athens and Lace-

(44) Isocrates, *Oratio ad Philipum, p.* 180.

demon, passed to Thebes; and Thebes, in her turn, after a brilliant prosperity, shortened by its audacity, was enveloped in the same ruin, and the empire of the Grecian seas, was abandoned to the Macedonians.

Section VII.

MACEDONIA.

§ 1. PHILIP, king of Macedon, who took part in all the views and projects of the Greeks, desirous of raising himself to grandeur on their ruin, made every effort, from the commencement of his reign, to create a marine, in order to secure to himself a greater preponderance of power. With this prince, a treaty was a snare, and a present, a declaration of war. Without pretending to justify all the means he employed to obtain the ends he had in view, it cannot be denied, that he was one of the ablest men in the art of government. His first pretext for arming, was to expel the pirates, who had become insolent by a long series of successful depredations, and to clear the Ægean and Ionian seas of these marauders. But he himself soon exercised the same infamous, though lucrative employment. He scoured the seas with his ships, and carried off one hundred and seventy vessels, richly laden, the booty of which was of great service to him in prosecuting the war. Philip was not destitute of flatterers, who, confounding success with justice, invented reasons to prove both the honour and lawfulness of these maritime expeditions. A vi-

olent death arrested him in the midst of his projects and enterprises. He was slain at the time, when, under the modest and specious title of generalissimo of Greece, he was preparing to fight the Persians, and already considered himself as the conqueror of Asia, and the ruler of the sea. Alexander the Great, who succeeded him, inherited both his ambition and his dominions. He entered into all the views of his father, adopted the same principles, reigned with more splendor, though with less genius and address, availed himself of the glory which Philip had acquired, and formed projects of his own, still more vast and boundless. Though dazzled with the rapidity of his victories, and finding every where new food for his pride, he did not forget, that without commerce, and a well established marine, his conquests would prove useless, and even ruinous. For this reason, having destroyed Tyre, and made Carthage tremble, he laid the foundation of Alexandria, as the capital of the universal monarchy which he meditated; and to serve as a general *entrepot* for the commerce of the different parts of the world, to be concentrated in that place. He intended to open an advantageous communication between India and Ethiopia, by the Red Sea and the Nile, and another between Europe and Africa, by the Mediterranean. For this purpose, he placed the new capital of the world between Tyre and Carthage, that it might draw to itself the commerce of both cities.

Vast plans of Alexander; his sudden death.

3. It is said, that Alexander had resolved to embark on the coasts of Syria, proceed to humble Carthage, and to subdue Numidia and Mauritania; that he proposed, afterwards, to pass the straits of Gibraltar, and, landing in Spain, reduce it under his power; that from thence he intended to penetrate into Italy, to depress the greatness of Rome, against which he had taken offence, and then to return into Greece. Others relate, that he meant to double the Cape of Good Hope, circumnavigate Africa, and re-enter the Mediterranean. He caused timber to be cut on Mount Libanus, for the construction of gallies of seven ranks of oars, and he commanded the king of Cyprus to furnish beaks, sails, and cordage, for his ships. He intended, also, to enter the Euxine, and to sail as far as the Palus Meotis. He had caused materials to be prepared for equipping a fleet, which he designed to launch on the Caspian Sea; but death surprised him in the flower of his age, in the midst of all the pleasing and brilliant prospects, which fortune opened to his view: with him, all his projects terminated.(45)*

Section VIII.

EGYPT.

§ 1. EGYPT, in its geologocial and topographical circumstances, presented no immediate inducement

(45) Quintus Curtius *in vita Alex.* Justin. *Histor.*

* The various, extensive, and magnificent schemes of this extraordinary man, are elegantly described by Dr. Robertson, in his excellent *Historical Disquisition concerning India*.....T.

Egypt paid no attention to navigation before the time of Sesostris.

to its inhabitants, to make navigation their chief employment. Surrounded, on almost every side, with immense rocks of granite and marble, inundated every year, by the periodical overflowing of the Nile, producing only a few small trees, this country was destitute of the materials suitable for building of ships. A moral power contributed no less to estrange the Egyptians from nautical pursuits. Religion, which, in that country, more than in any other, is subservient to politics, attached a kind of dishonour to the occupation of a mariner; and Typhon, the emblem of the principle of evil, and, consequently, the enemy of all good, was also the god of the sea. A priest believed himself defiled by the mere touch of a seaman, and, for that reason, strangers were declared impure.

2. From the combined effect of all these causes, before the reign of Sesostris, the Egyptians, who, from the natural fertility of their soil, wanted very little from other nations, shut their ports against strangers, and treated navigators as profligate and profane persons. Time, which discovers every secret, and makes known, at once, causes and their effects, opened the eyes of the great monarch who reigned in Egypt 1659 years before the christian era, and enabled him to discern the advantages of a commerce with India. Sesostris, at length, surmounted all the difficulties which popular prejudices opposed to the establishment of commerce and navigation. He took vengeance on the Erythreans, who had rendered them-

selves formidable on the Red Sea ; armed a fleet of four hundred ships in the Gulf of Arabia; made himself master of all the islands of the Red Sea, even as far as India, and arrived, according to Herodotus, to a sea which was innavigable, on account of its numerous shallows. After the death of Sesostris, the ancient prejudices revived, and all the advantages his country had derived from commerce were lost.

The conquests of Alexander, were divided, after his death, among his lieutenants. Egypt fell to the share of Ptolemy, son of Lagus, who was succeeded by twelve of his family, named Ptolemy, and distinguished from each other by their surnames. The first king of Egypt, of an elevated and enterprising genius, encouraged the establishment of Alexandria, and granted to that city all the rights and privileges which it deserved to enjoy. Ptolemy opened again the long interrupted intercourse with India, and the facilities he granted to its commerce, joined to the immediate hopes of gain, attracted to Egypt the most respectable merchants, and most skilful navigators. To excite still more the spirit of commerce in his dominions, and, at the same time, to prevent other nations from drawing it from Egypt, he laid out the plan of a magnificent city on the Red Sea, where he might himself inspect his fleets, and keep up the necessary intelligence with them.

4. This grand design, thwarted by various obstacles, was executed after his death, by Ptolemy-

Ptolemy Philadelphus, promotes and protects commerce and navigation.

Philadelphus, who gave to the city the name of his mother, Berenice. This prince maintained two large fleets, one in the Red Sea, the other in the Mediterranean, to restrain pirates, and to protect maritime commerce from their attacks. The expense of two such establishments, shews, at once, his naval power, and his attention to whatever might facilitate the progress of commerce. Philadelphus, in fact, was too good a politician not to know that a sovereign attempts in vain to encourage commerce, if he does not effectually provide for its protection by a powerful navy. His own, therefore, was in the most flourishing state. It was, doubtless, to make known how much this prince had done to promote navigation, and to transmit to posterity a durable monument of the splendour which commerce had acquired during his reign, that Callicrates, commander of the royal fleets, consecrated to Arsinoe, the wife and sister of Ptolemy, a temple, in which she was honoured under the name of Venus, the tutelary divinity of mariners.(46) The conquests which Philadelphus added to his paternal dominions, rendered his empire unbounded by sea and land. He had, according to Theocritus,(47) 33,339 cities subjected to him; so that Callimachus, in a hymn, made in honour of the Isle of Delos, supposes, that Apollo formerly predicted the greatness of this prince, and that he

(46) Athenæus, *lib. 5, p.* 206.

(47) Theocritus, *Idyl.* 17.

would extend his empire from the rising to the setting sun.

5. Ptolemy-Evergetes pushed his conquests beyond those of his father. He was constantly on his guard to prevent any disturbance in the navigation of the Arabian sea, where he exercised exclusive dominion. This prince was the last of the family of Lagus who has merited the praises of the historian. His successors are described as addicted only to pleasure and luxury, and neglectful of commerce and navigation.

6. Notwithstanding this defect in the Ptolemies who succeeded Evergetes, the Egyptians had received from his predecessors too strong an impulse towards commerce, to abandon it. They continued to be passionately attached to navigation, and to the discoveries to which it leads. We behold them on one side, traversing every part of the Mediterranean, advancing as far as Cadiz, penetrating the Palus-Meotis; on the other, visiting the gulfs of Arabia and Persia, passing to the south along the eastern shore of Africa, to the Island of Madagascar, running the whole coast of the Indian Ocean, landing at the mouth of the Indus, surveying the coasts of Malabar and Coromandel, frequenting the Island of Taprobana,* ascending the Ganges, and pursuing their navigation even to Palibothra,† the capital of the Indies.

* Ceylon. † Allahabad, or Patna—See Rennell's Memoir and Map.....T.

Final subjection of Egypt by the Romans, and the ruin of its marine.

7. The reign of the twelfth Ptolemy, surnamed Dionysius, the last of the princes of that name, has derived more celebrity from the war, so gloriously maintained in Alexandria by Cæsar, than from the exploits and great actions of the Egyptian monarch.(47)

8. Cleopatra, who succeeded her brother, celebrated for her beauty, her luxury and gallantries, had so well restored the Egyptian marine, and repaired the disasters it had suffered in the siege of Alexandria, that she was in a situation to lend considerable aid, in ships and maritime forces, to Anthony, in the war against Augustus.(48) It was, without doubt, to perpetuate the remembrance of the maritime power of this princess, that many of her medals bear on the reverse, vessels and prows of ships. After the battle of Actium, and the tragic death of this unfortunate queen, Egypt was reduced to a Roman province, and its maritime commerce passed into the hands of the Romans, to whom the Egyptians were, for a long time, mere agents and factors.

9. In the last periods of its history, Egypt did not support its ancient and distinguished character; but it continued to improve, in a high degree, in industry and manufactures. The revolutions which this un-

(47) The war of Aelxandria exhibits one of the most interesting periods of ancient history: the description of it in the commentaries of Cæsar, is always read with pleasure. Cæsar *de bell. civil.* lib 3. *et* Hirtius Pansa, *de bello Alexand.*

(48) Plutarch. *in vita Anton.*

happy country afterwards experienced, the invasions of the Persians, the irruption of Amrou the Saracen general, under the Caliph Omar, the madness of the Crusades, the bad government of the Mamelukes, and their subjection to the Turkish yoke, as well as the reduction of Egypt by the French, have not yet been sufficient to complete its destruction. Egypt, with a capital containing four hundred thousand inhabitants, sufficiently proves, that it still retains some portion of its former magnificence. It is impossible to calculate what will be the consequences of its restoration, and its effects on the nations of Europe, or to what degree of splendour she would reach, if her commerce, arts, sciences, and manufactures, should be re-established in the hands of an industrious and magnanimous people.(49)

Section IX.

CARTHAGE.

§ 1. ON the ruins of the ancient city of Tyre, assisted by the knowledge derived from the Phœnicians, arose Carthage,(50) the proud rival of Rome,

(49) Letters on India, in relation to Egypt, by *Taylor*.

(50) According to the most generally received opinion, 130 years before the foundation of Rome, Eliza, or Dido, a Phœnician princess, to avoid the tyranny of her brother Pygmalion, embarked for Tyre, and landed on the coast of Africa with the companions of her flight. The beauty of the country, her kind reception by some ancient Tyrians settled there, and by the Africans in the vicinity, determined her to fix her residence in that place, where she built

who, for a long time, disputed with her the empire of the world. Instigated to conquest by avarice, less jealous of her glory, than greedy of wealth, this republic rendered herself mistress of all the coasts of Africa, Sicily, and Sardinia. Ruling with tyrannic sway, over the Mediterranean, to the very pillars of Hercules, she ventured to prohibit all foreigners from staying longer than five days in the ports of Sardinia, allowing them to purchase only what was necessary for repairs, or for religious sacrifices:(51) she attempted to prevent the Romans even from washing their hands in the sea of Sicily.

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the city of Carthage.* This establishment was nothing less than a conquest. Dido paid a tribute for the land granted to her; and this tribute existed for several centuries, until the Carthaginians, become more powerful, rendered, in their turn, the same people tributary to them.

(51) *Polybius Hist. lib. 3. ch. 3.* This prohibition is contained in the first treaty between the Romans and Carthaginians, about 28 years before the invasion of Greece by Xerxes. As throwing some light on the state of navigation at that period, it may not be unacceptable to the reader, to see it entire, as given us by Polybius: "Between the Romans and their allies, there shall be peace and alliance upon these conditions. Neither the Romans nor their allies shall sail beyond the Fair promontory, (lying on the north side of Carthage) unless compelled by bad weather or an enemy. And, in case they are forced beyond it, they shall not be allowed to take or purchase any thing, except what is barely necessary for refitting their vessels, or for sacrifice; and they shall depart in five days.

* See Virgil's Æneid, book 1, l. 340—367.

Great commerce and maritime power of Carthage.

2. The Carthaginians, actuated by an insatiable cupidity, with no other view than gain, pursued wealth wherever it could be found, and seized on every thing they thought fit to take, without any regard to the rights of property. Their maritime progress, rapid and extensive, quickly produced luxury and audacity, which usually follow in the train of success. About the close of the second Punic war, Carthage reckoned within its walls, more than 700,000 inhabitants, and was the capital of more than 300 cities in Africa. She had sent colonies to Spain, Sicily, Sardinia, and the Balearian islands, which became populous and powerful. Her ships, universally respected, made, every day, new conquests. It is even believed, that the Carthaginians penetrated to America; a discovery which their distrustful and suspicious

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The merchants who shall offer any goods to sale in Sardinia, or any part of Africa, shall pay no customs, but only the usual fees to the scribe and crier; and the public faith shall be a security to the merchant for whatever he shall sell in the presence of these officers. If any of the Romans land in that part of Sicily which belongs to the Carthaginians, they shall suffer no wrong or violence in any thing. The Carthaginians shall not offer any injury to the Ardeates, Antiates, Laurentines, Circœans, Tarracinians, or any other people of the Latins, that have submitted to the Roman jurisdiction. Nor shall they possess themselves of any city of the Latins that is not subject to the Romans. If any one of those be taken, it shall be delivered to the Romans in its entire state. The Carthaginians shall not build any fortress in the Latin territory, and if they land there in a hostile manner, they shall depart before night."..... *Hampton's Translation*.....T.

Jealousies between Rome and Carthage, cause of the first Punic war.

policy induced them unanimously to conceal from other nations.*

3. The desire of securing and extending their conquests in Sicily, the necessity of humbling Rome, who regarded them as haughty rivals, and a determination to maintain their maritime and commercial empire, were the true motives which led to the first Punic war. The Romans were, no doubt, animated by similar motives. It is also probable, that the possession of Sicily and Sardinia, which would naturally be the prize of the victors, had a powerful influence on the resolution taken by the Roman Senate, to enter into war with the Carthaginians. This war gave rise to many naval combats, which were followed by a peace, very disadvantageous to Carthage.

4. Hamilcar Barca, who was charged with the negotiations, subscribed, with regret, to the hard conditions, which the distress of the republic compelled him to accept. On this account, he felt the most violent indignation against the Romans, whom he accused of abusing the advantages they had gained; but his hatred was exasperated to the highest pitch, when the Senate not content with the very hard terms of the treaty, refused to ratify it, until others, still more offensive, were added. Hamilcar acquiesced; but the strong resentment which he cherished, must be regarded as one of the principal causes of

* This is a vague conjecture resting on no authority. See Robertson's History of America, book 1.....T.

the second Punic war, since it induced him to inspire the young Hannibal with the deepest hatred against Rome. Hannibal commenced hostilities in Spain; but the Romans had, for some time, authorised provocations towards his father, and brother-in-law Asdrubal, that in some degree justified the Carthaginians in coming to an open rupture. With the olive branch in one hand, and his sword in the other, Hannibal opened his way through the Pyrenees, and across the summit of the Alps. After the battle of Trebia, so advantageous to the Carthaginians, their leader was enabled to obtain a glorious victory, and to triumph over his enemies at Cannæ.

5. The Romans, instructed by defeat, confined themselves to carrying on a war of stratagem, cut off his supplies, intercepted the contributions he had imposed, and cooled the ardour of the recruits he had collected from every quarter. Hannibal soon perceived an alarming diminution in his military chest, and in his legions. He beheld, in a short time, Spain, Sicily, and Sardinia, snatched from him. The fortune of Scipio finally triumphed over that of Hannibal, in the field of Zama. Carthage, thus vanquished, received law from a conqueror, who knew how to make the most of the advantages she had gained. Rome not only disarmed her rival, by obliging her to burn all her fleets in which her principal strength consisted, but imposed heavy contributions, which were exacted with the utmost rigour. "The cause of gods and men at length prevailed," says Livy.

" It was disputed which of the two nations had bro-
" ken the peace ; the event of the war decided the
" question like an impartial judge, and gave the vic-
" tory to the side that had the right."(52)

6. The third Punic war may be regarded as the last convulsions of a victim, pierced by the fatal knife, and expiring with the loss of blood. The Roman Senate, uneasy, and jealous of the reviving strength of its enervated rival, resolved on her final destruction. The Carthaginians, alarmed at the armed force which Rome directed towards their capital, yielded to hard necessity, and sought to negotiate. The consuls who commanded the naval forces in person, made such extravagant demands, that the Carthaginians swore that they would meet death rather than submit to such intolerable conditions. This resolution gave rise to a war that lasted two years, at the end of which, Carthage was closely pressed, and attacked in her last entrenchments. The Carthaginians tried every possible means which could be devi-

(52) *Vicerunt dii, hominesque ; et id de quo verbis ambigebatur, uter populus fœdus rupisset, eventus belli, velut æquus judex, unde jus stabat ei victoriam dedit.* Tit. Liv. Hist. lib. 21.*

* This mode of deciding on the justice or injustice of a war by its success, seems unworthy of an impartial and philosophic historian. Polybius, more judicious, discusses the various causes, and seems to incline to the opinion that the Carthaginians were the first aggressors, by violating the article of the treaty which did not allow them to attack Saguntum, or to pass the Iberus.....T.

sed for their defence, in the exhausted state to which they were reduced. With old timber, and rusty iron, they constructed a fleet which at first gave some alarm to the Romans, but was soon destroyed. They defended their city to the last, disputing the ground, street after street, to the very citadel, which they set on fire, and threw themselves into the flames. We might almost say of Carthage, what Cicero somewhere says of Sardanapalus, that in his death he performed the first act of courage exhibited during his life.

7. Thus perished Carthage, about 750 years after its foundation. The Romans built a new city on a part of the ancient scite; but it acquired celebrity only during the reign of Augustus, who considered it as the second city in the Roman empire. Maxentius reduced it to ashes. It regained sufficient importance, in the time of Genseric, king of the Vandals, to hold a considerable rank among the cities of Africa. Belisarius reannexed it to the Roman Empire. About the end of the seventh century, it was so completely destroyed by the Saracens, that not a single vestige of it now remains.

Section X.

ROME.

§ 1. DIONYSIUS HALICARNASSUS, Polybius, Livy, and other historians, agree in supposing that the Romans, in the first ages of the republic, were unacquainted with navigation, and that they did not begin to build vessels, until some time during

First rise of the Roman marine.

the war with the Carthaginians, when the capture of Agrigentum confirmed them in their design to conquer Sicily. Polybius mentions, as a proof of the great genius of the Romans, the boldness with which they conceived the project of forming a marine without having, at the time, any knowledge of maritime affairs, and the wonderful success which crowned their attempt.(53)

2. Though the marine of the Romans was at first very imperfect, it became the means, afterwards, of extending their conquests, and enabled them to carry their arms into Sicily, Sardinia, Corsica, Spain, Africa, and Asia. Historians do not mention any maritime expedition of the Romans, during the reign of the kings of Rome ; but the inference which might be drawn from their silence, is contradicted by the ancient treaties concluded between Rome and Carthage, quoted entire by Polybius, from the originals preserved, in his time, in the Capitol.(54) By one of these treaties, concluded under the first consuls of the republic, and in the same year with the expulsion of the kings, it is evident, that from that

(53) Polybius Hist. lib. 1.

(54) Polybius, loc. cit.*

* See ante, p. 49, note.—The first treaty was dated in the consulship of L. Junius Brutus and M. Horatius, the 244th year of Rome, and in the first year of the republic ; so that the Romans must have had some maritime intercourse with other nations during the reign of their kings.....T.

Mistakes of historians as to the commencement of the Roman marine.

time, the Romans possessed ships distinguished from those of their allies, and of their own subjects, and that these could not have been mere merchant-ships, since vessels of a different kind are specified. It is mentioned by Livy, that in the year of Rome 416, which is 74 years before the first Punic war, the Romans having seized on the fleet of the Antiates, caused six of their gallies to be brought up to Rome, and put in places appropriated for the preservation and building of ships.(55)

3. Under the consulship of Caius Junius Brutus, and Emilius Barbulus, the tribune Decius Mus, awakened in the Romans an attachment to a marine, by inducing them to create two magistrates, called *Duumvirs*, whose duty it was to superintend the equipment of fleets, and every thing which concerned navigation. The institution of Duumvirs took place about 50 years before the period assigned by Polybius for the creation of the Roman marine. Yet it is the same historian who gives an account of an insult offered to the Roman fleet, by the Tarentines, which occasioned the war against Tarentum; and it is he who informs us that Valerius, commander of the Ro-

(55) Livy *Hist.* lib. 8, c. 14.*

* The words of Livy are, " *Naves Antiatium partim in navalia Romæ subductæ, &c.* So that they had their *navalia*, or docks, for building, repairing, and preserving ships.....T.

Encouragement given to navigation by the Romans.

man fleet, filled the office of naval *Duumvir.*(56) The Punic wars rendered it necessary for the Romans to bestow more particular attention on the improvement of their marine, which before had no fixed establishment. Rome began, at this period, to encourage the nautical art, by the greatest rewards. The consul Duillius, after having entirely defeated the Carthaginian fleet, in the year of Rome, 491, received the thanks of the nation, by an extraordinary triumph, which was the first naval triumph ever seen at Rome. Coins were struck, representing Neptune with his trident, borne in a car. The honours decreed to Duillius were rendered in some measure permanent, by the privilege granted to him by the Senate, of being always preceded, on going to his house at night, by flambeaus, to light him on his way through the streets of Rome, accompanied with martial music.(57) The monument erected by the republic on this occasion, in order to excite emulation by the constant exhibition of this naval victory, ex-

(56) Polybius, lib. 1.

(57) Cicero, however, finds fault, we know not why, with this practice of Duillius, which he considered as puerile and arrogant. In his book *de Senectute,* addressed to Cato, he says, *Duillium redeuntem a cœna sæpe videbam puer. Delectabatur crebro funali et tibicina, quæ sibi nullo exemplo privatus sumpserat; tantum licentiæ dabat gloria!* Florus was of the same opinion, lib. 2, c. 2, § 10. *Non contentus unius dici triumpho per vitam omnem ubi a cœna rediret, lucere sibi funalia præcinere sibi tibias jussit quasi quotidie triumpharet.*

isted in the time of Pliny, the naturalist.(58) It was a rostral column, with inscriptions suited to the event, and has handed down to posterity, the name of Duillius, and the gratitude of the nation.

4. This first naval action, this brilliant victory over a nation who had long possessed the empire of the sea, encouraged the Romans to carry the war into Africa. This design spread terror among the Carthaginians, who always dreaded being attacked in their own territory. Regulus was charged with the execution of this scheme, to prevent which, Carthage dispatched to sea a fleet of 350 gallies, having on board more than 140,000 men. This was appearing, says Polybius, in a manner suited to the dignity of a nation who had begun to exercise dominion over the sea.(59) The Carthaginian fleet, in spite of its superiority in manœuvring, the lightness of its ships, and all the advantages which arise from experience in navigation, did not dismay Regulus. By means of a machine for grappling, called *Corvus*, invented by Duillius, he knew he could force the enemy into a situation to be boarded, which was all he wanted. There were three different and furious actions between these large fleets, manned by a vast number of troops on both sides. In the three engagements, the advantage remained on the side of the Romans, who gained a complete victory. The Carthaginians, it is

(58) Pliny *Hist. Nat.* lib. 34, cap. 7.

(59) Polybius *Hist.* lib. 1.

true, sunk eighty gallies; but the Romans took sixty-four, and sunk thirty; while the Carthaginians did not take one.(60)

5. Such was the first essay of the Roman marine. The next year, the republic sent to sea one hundred and fifty gallies* under Servius and Emilius. The command of the naval armament was preferred to that of the land forces. The Carthaginian fleet, composed of two hundred gallies, advanced against the enemy. The Romans, on their part, met the encounter, as soon as they perceived the approach of the other fleet, and, though inferior in number, attacked it so briskly, and with such superior valour, that it hardly seemed a battle; they put them entirely to the rout, and the Carthaginians lost a hundred and fourteen gallies. The consuls, who wished to return immediately to Rome, to enjoy the triumph which awaited them, obstinately kept to sea, in spite of the remonstrances of the pilots, who foresaw an approaching storm. A tempest arose with such tremendous violence, that out of three hundred and sixty-four gallies, scarcely eighty were saved; the rest were wrecked, or stranded on the coast. Polybius remarks, in his account of this event, that history furnished no example of so great a loss.(61) By this mis-

(60) Polybius *Hist.* lib. 1.

(61) Polybius, lib. 1. ch. 3.

* This number is not correct, for Polybius says, the Romans put to sea with a fleet of 350 ships; and that of 464 ships, only 80 escaped the storm. The number of the Roman fleet added to the

Losses of the Romans.—They build a new fleet.

fortune of the Romans, Carthage regained the maritime superiority she had lost. She omitted no efforts to destroy the remnant of the Roman marine. She sent an army into Sicily, composed of veterans and new levies, with one hundred and forty elephants. Two hundred gallies protected the operations of the land forces, and insulted the enemy wherever they met them.

6. The Romans, in three months, built a new fleet of one hundred and forty sail, an effort which Polybius regards as almost incredible.(62) The consuls who commanded, were joined, in their course, by the remainder of their former marine, which increased the number of their gallies to two hundred and twenty.* With these forces they proceeded against Palermo, which they took by assault. It was the most valuable place the Carthaginians possessed in Sicily. But the inexperience of the Romans in manœuvring their vessels, cost them one hundred and fifty, which were destroyed by a violent storm, near Cape Palinurus. Rome, almost discouraged by so many successive disasters, relinquished, for a time, the empire of the sea, and confined herself to expeditions on land, which she then regarded as more

ships before captured, makes that of 464, so that the Roman fleet was superior to that of the Carthaginians.....T.

(62) Polybius, lib. 1. ch. 3.*

* The historian states the number of the new fleet to be 220, and the remnant of the old fleet which joined it, made the whole 300 sail.....T.

conducive to the glory and majesty of the republic, than all the wealth to be acquired by commerce.(63)

7. This determination was of short continuance. The Carthaginians having dispatched a fleet to take possession of Sicily, the Romans, with the greatest expedition, equipped another to oppose this invasion, which so deeply wounded their national pride.(64) This fleet, fitted out with so much precipitation, and at great expence, was unable to resist the Carthaginian forces, and was destroyed by them in the famous battle of *Drepanum*, in which they sunk eighty gallies, and took ninety-three. The consul Claudius, who commanded the Roman fleet, thought himself fortunate to bring off the residue in safety. This defeat was ascribed to his misconduct, and he was punished by the loss of his consulate. The Senate not disheartened, equipped a new fleet, and gave the command of it to Lutatius, distinguished for the treaty which terminated the first Punic war. The Roman fleet attacked and beat that of the Carthaginians, sunk fifty of their ships, and captured sixty. This victory put an end to a long and bloody war, in which

(63) Polybius, *ibid.* "The Romans, after such heavy and repeated losses, though their ardour was not abated, yet thought it more for the honour and glory of the empire, under the pressure of such great evils, wholly to abstain from maritime expeditions."

(64) Polybius, *ibid.* "As soon as the news of this misfortune reached Rome, they immediately equipped a new armament and dispatched it to Sicily."

the two republics exhibited a mutual hatred far exceeding their strength.(65.) It continued twenty-three years without interruption, and the Romans reaped all the advantages resulting from the contest. The peaceful possession of Sicily, Sardinia, and Corsica, was confirmed to them by the treaty of peace.

8. At the termination of the second Punic war, Scipio, conqueror of Hannibal in Africa, granted peace to the Carthaginians, on condition, that in future they should keep but ten ships, and that all the rest should be delivered up to the Romans, which was carried into effect.(66) Scipio, on his return to Rome, after receiving the honours of a triumph, gave public thanks to the Gods who had granted him such a splendid victory. He erected a temple to the divinity who presides over storms, for having snatched him and his fleet, from a furious tempest in the sea of Corsica, on their return from Africa. On the temple was placed the following inscription:

Te, quoque, tempestas, meritam delubra fatemur,
Cum pene est Corsis obrutus classis aquis.

9. The splendour of these triumphs, and the public homage rendered to the Gods, the extraordinary abundance of grain and other commodities, which, after this victory, flowed into Rome, and the advantage of possessing the islands of Sicily and Sardinia,

(65) Polybius, *loc. cit.* They contended with more animosity than strength.

(66) Livy lib. 30, § 37, *et* 43.

Rapid advancement of the Roman marine.

inspired the Romans with the strongest attachment to a marine.

10. From this period Rome so improved in the science of navigation, that she was soon in a condition to chastise the Illyrians, who were addicted to piracy, and committed depredations on the neighbouring nations.(67) She also compelled Philip, king of Macedon, to raise the siege of the cities of Oricum and Apollonia, in the possession of the Romans on the coasts of Epirus and Macedonia, and to burn a part of his fleet.(68) Philip was not restrained by this first check. Some years after, he put to sea a numerous fleet, once more to try his strength with the Romans; but having been completely vanquished, he sued for peace, which he obtained on very hard terms, among others, that he should deliver up all his covered gallies to the victors.(69) Perseus, son of Philip, being joined by the Illyrians, wished also to try the fortune of a battle with the Romans, but was entirely defeated and made prisoner, with his three sons, and Gentius, king of Illyria. These captives, exhibited to the view of the Romans, enhanced the splendour of the trophies of the victor, C. Fulvius, to whom the honours of a triumph had been decreed.(70)

(67) Livy, lib. 20. Florus, lib. 1, cap. 5.

(68) Livy, lib. 24, § 40.

(69) Lib. 33, § 30.

(70) Livy, lib. 45, § 43. Velleius Paterculus, lib. 1, § 9.

Great maritime power of the Romans.

11. Antiochus was not more fortunate. Having been defeated several times, he was compelled, by a treaty of peace, to shut himself up in Syria, to abandon to the Romans, all his possessions in Asia, and to deliver up all his vessels of war, excepting ten brigantines, to which number he was limited. He attempted afterwards to re-establish his marine, but the Romans set fire to the vessels he had ordered to be built.(71) The Etolians, the Istrians, and Narbis, the Spartan usurper, who infested the Grecian seas with his piracies, suffered the same fate.(72)

12. The total ruin of Carthage, which followed the third Punic war, subjected all Africa to the Roman power. This province, by its supplies of corn, afterwards became of great service to Rome. The burning of Corinth, which took place a short time after, completed the subjection of Greece, and reduced it to a servitude rendered more gloomy from its having so long been accustomed to command. Every thing, at that period, yielded to the power of the Roman republic. Mithridates, however, who dared to resist the Roman power, at first with adequate courage, and afterwards by artifice and fraud, would have made Rome tremble, if he had not been obliged to contend against a Sylla, a Lucullus, and a Pompey,

(71) Florus *Hist.* lib. 2, cap. 8, § 12—18.

(72) Livy, lib. 35. Polybius, lib. 13, *in excerpt.*

to whom he was at last compelled to yield, after a contest of twenty years.(73)

13. While Rome was engaged in the conquest of Africa and Asia, in subduing the power of Jugurtha, king of Numidia, of Tigranes, king of Arminia, and in quelling domestic troubles, Cilicia became a nursery of pirates. Formidable by their depredations, they kept up a connexion and correspondence with various places, to facilitate their descents on the coast, to ravage the country, put the chief maritime towns under contribution, and to rifle the treasures of the most celebrated temples. The Roman people complained loudly of the dearness of provisions, and the necessaries of life, which in their passage from Egypt, Sicily and Sardinia, were intercepted by these pirates. Pompey was, at length, ordered with a numerous fleet, to put an end to a war, the consequences of which appeared dangerous. Success attended the talents and exertions of this great man. He soon crushed these robbers, and, prohibiting them from the use of the sea, restored liberty and safety to navigation.(74)

14. The conquests of the Romans in Africa and Asia, brought immense riches, before unknown to

(73) Plutarch, *in vita Syllæ*, *Lucull.* et *Pomp.*

(74) Plutarch, *in vita Pomp.* Florus, lib. 3, c. 6. Vell. Paterc. lib. 2, § 31—32. Cicero *pro lege Manilia.*

Increase of wealth, luxury, and refinement, among the Romans.

them. This sudden influx of wealth, introduced excessive luxury and elegant refinement, which pervaded all classes of society. The love of pleasure, pomp, and magnificence, banished the ancient severity of manners. The nation, become more rich, polished and voluptuous, despising the humble poverty of their ancestors, imagined a thousand wants, which gradually undermined their former ideas of virtue.(75)

15. The Romans, from that period, goaded with the lust of conquest, which promised them new riches, were not content with having obtained the empire of the Mediterranean. They aspired to the dominion of a new sea, and to the acquisition of unknown regions. While Cæsar held the government of Gaul, the Romans ventured to navigate the Atlantic ocean, and for this purpose, they caused ships to be constructed stronger than any they had before possessed.

16. The Venetes, inhabitants of Vannes, were powerful at sea, and carried on a commerce with Great-Britain. They ruled over the adjacent coasts, and exacted tribute from the inhabitants. They assassinated the ambassadors sent by Cæsar to request

(75) *Quippe remoto Carthaginis metu, sublataque imperii æmula, non gradu, sed præcipiti cursu a virtute descitum, ad vitia transcursum ; vetus disciplina deserta, nova inducta.* Vell. Paterc. lib. 2, cap. 1. *Paulatim discessum ad delinimenta victorum, balnea, et conviviorum elegantiam, idque apud imperitos humanitas vocatur.* Tacitus *Annal.* lib. 2.

their alliance, and he punished their barbarity, by vanquishing them in a sea-fight.(76) After this victory, he resolved to pass over to England, a country unknown to the Romans, and even to the Gauls, who had barely touched on its coasts, to purchase some articles of which they stood in need. Genius and courage were the companions of Cæsar in this bold and hazardous enterprise ; and he was fortunate enough, notwithstanding the accidents he encountered, to make good his descent upon England, and to compel a people, ferocious in their manners, and fanatics for liberty, to pay tribute to the Romans.

17. The additional knowledge in marine affairs, which Cæsar had acquired among the Gauls, was of great service to him during the civil wars that called him to Italy. The courage and celerity with which he performed all his maritime expeditions, ensured him the defeat of Pompey, and the submission of Cleopatra. He returned to Rome, where the honours of a triumph were decreed to him, and where he finished the enslaving of his country, by making himself absolute master. When Cæsar was preparing to put the Roman marine in a more flourishing condition, he fell beneath the strokes of assassins, in the midst of the senate.(77)

18. After the tragic death of this hero, Augustus, though inexperienced in the art of war, and naval

(76) Comment. Cæsar. lib. 3, § 2.

(77) Plutarch, *vita Cæsar.*

affairs, knew how to choose able generals for the land and sea service, by the aid of whose judgment and experience, he gained many victories. He began by entirely destroying the naval forces of the younger Pompey, who endeavoured, in vain, to support the name of *Great*, so justly acquired by his father. The famous battle of Actium placed at his discretion the rival whom he most feared.(78) He knew how to profit by this great victory, the effects of which enabled him to establish a system of marine, that lasted during the reigns of several of his imperial successors. It consisted in having three grand divisions of his naval forces well maintained: One of them at Frejus, in Narbonese Gaul, to keep in awe the coasts of Spain, and that part of Languedoc and Provence which is washed by the Mediterranean; another at Cape Misene, to protect the navigation of the lower, or Etrurian sea, of the islands of Sicily, Sardinia, and Corsica; the third at Ravenna, to secure the navigation of the upper, or Adriatic sea. Besides these squadrons, he had at Misene and Ravenna, a considerable number of soldiers called *Classiarii*, who were constantly exercised for maritime warfare, and were

(78) Octavius, after the defeat of Anthony, remained alone, and having no longer a competitor, he was not slow in becoming master of a republic, which, by the various shocks it had received, was unable to prevent it. With him began the Roman empire, which he swayed under the name of Augustus. In changing his name, he appears to have changed his character. Octavius was cruel and brave. Augustus was humane, and extremely prudent in danger.

Voyages and discoveries during the reign of Augustus.

always ready to embark in the sea service.(79) Augustus, also equipped vessels to make new discoveries on the coast of Africa towards the equator; he sent some to survey the coasts of Europe, as far as the frontiers of the Cimbric Chersonesus; and ordered others, called *Lusoriæ*, to ascend the great rivers whose mouths were known.(80)

19. The Romans had never undertaken so many perilous and important voyages, as during the reign of Augustus. It is to this period that Venus alludes, when, in the Æneid, she remonstrates with Jupiter, who had promised her the empire of the sea and the land for the descendants of the Trojans.(81) But

(79) *Primores Classiariorum Misnensium labefactare connixa est.* Tacit. *annal.* 15, cap. 51. The following inscription is found on an ancient marble: MIL. CL. PR. R. that is, *Miles Classis Prætoriæ Ravennatis.*

(80) Vegetius, *de re navali.* lib. 4. Schœffer, *de militia navali.* lib. 2, cap. 3.

(81) *Alloquitur Venus: O qui res hominumque deumque*
Æternis regis imperiis, et fulmine terres,
Quid meus Æneas, in te committere tantum
Quid Troes potuere? Quibus tot funera passis,
Cunctus ob Italiam terrarum clauditur orbis?
Certe hinc Romanos olim volventibus annis
Hinc fore ductores revocato a sanguine Teucri,
Qui mare, qui terras omni ditione tenerent,
Pollicitus: quæ te genitor sententia vertit?
Virgil Æneid, lib. 1, v. 230.

Oh thou! whose sacred and eternal sway,
Aw'd by thy thunders, men and Gods obey;

The successors of Augustus neglect the marine.

when Cassandra, the daughter of Priam, in Lycophron,* made a similar prediction, it must be understood of a period long anterior to Augustus. These predictions might be taken for exaggerations, if Dionysius Halicarnassus,(82) in speaking of the transactions of his time, had not remarked, that Rome was the mistress of the sea, not only of that within the pillars of Hercules, but of the whole navigable ocean.

20. After the death of Augustus, most of the emperors who succeeded him, by birth-right, by fraud, by favour, or by means of revolted legions, retained no partiality for the marine, and it was gradually abandoned. History mentions only some hazardous expeditions, in which whim and caprice were more

What have my poor, exhausted Trojans done ?
Or what, alas ! my dear, unhappy son ?
Still for the sake of Italy, deny'd
All other regions, all the world beside ?
Sure, once you promis'd, that a race divine
Of Roman chiefs should spring from Teucer's line ;
The world in future ages to command,
And in their empire grasp the sea and land.
Pitt's Translation.

* A Greek poet of Chalcis, who lived in the time of Ptolemy Philadelphus. None of his compositions remain, except a poem entitled *Cassandra,* which contains the prophecies supposed to be uttered by the daughter of Priam, during the Trojan war. He is thus mentioned by *Statius.* Sylv. lib, 5, line 157 :

Carmina Battiadæ latebrasque Lycophronis atri.....T.

(82) Dionysius Halicarn. lib. 1.

conspicuous than true courage, or a just ambition to support the dignity of the maritime empire, which the Romans had acquired with so much trouble, and so many sacrifices.

21. Tiberius, whose ideas were wholly absorbed in vice and debauchery, possessed no other fleets than those created by Augustus, and which he suffered to decay.(83) Caligula, imitating the folly of Xerxes, as a great maritime exploit, threw a magnificent bridge over an arm of the sea, which separates Baiæ from Puteoli. He rode over it, dressed in a warlike habit, and the next day caused the honours of a naval triumph to be decreed to him, which he could adorn only with cockle-shells collected on the Batavian coast, at the time of his expedition for the conquest of Britain, an expedition stamped with equal folly.(84) Some ships were built by order of this prince, but they were designed not so much for real service, as for the purpose of luxury, and absurd magnificence. In a vessel made of cedar, its stern decked with jewels, and furnished with porticoes, gardens, and baths, he sailed along the coast of Italy, to the sound of melodious instruments.(85)

(83) Suetonius, *vita August.* et *Tiberi.* Tacitus *annal.* lib. 4.

(84) Suetonius, *vita Calig.* § 19.

(85) Suetonius, *vita Calig.* § 37.

22. Claudius, though of slender merit, was not less ambitious of the honours of a triumph. For this purpose, he dispatched a considerable fleet under the command of Plotius, a Roman senator, to make a descent on England. Having met with success, Claudius proceeded to England, to take possession of the country in person, and he returned afterwards to Rome, where he enjoyed a splendid triumph, and acquired the surname of Brittannicus, which the senate had the meanness to confer upon him. He placed a naval crown of gold on his palace, and on the prow of the ship in which he sailed.(86) Nero, after embellishing the harbour, constructed by his predecessor at the mouth of the Nile, engaged in no maritime enterprise, except to cause dust to be brought from Alexandria, for the use of the wrestlers, and in which to bury the victims of his atrocities.(87) Galba and Otho, who both suffered the same fate, were scarcely seated on the throne, before they were hurled from it, and had no time to attend to a marine. Vitellius, who succeeded them, had a fleet for his defence; but by the influence of Bassus, its commander, it declared, afterwards in favour of Vespasian, at that time its true sovereign.(88) Vespasian, on his return to Rome, after his expedition, felt so vain of every thing he performed, that he had a medal struck in honour of himself, on the

(86) Sueton. *vita Claud.* § 17, 18, 19.

(87) Sueton. *vita Nero.* Tacit. *annal.* lib. 14.

(88) Tacit. *Hist.* lib. 3, § 12. Sueton. lib. 7. § 8.

Trajan revives the maritime power of the Romans.

verse of which, he was represented under the figure of Neptune, having his right foot on a globe, and holding in his right hand the end of a ship's prow, and in his left, a trident, with this legend, *Neptuno Reduci*. Titus, who had taken part in the expeditions of his father, solely occupied with the care of rendering the people happy by his beneficence, entirely neglected the marine, as did his successors, Domitian and Nerva.

23. Trajan, seated on the imperial throne, revived the ancient maritime glory of the Romans. He constructed a harbour at *Centumcelli*, now called *Civitta-Vecchia*, defended by a castle erected in the sea. This work appeared to be so advantageous and convenient for shipping, that the remembrance of it was consecrated by a medal, representing a port adorned with different edifices, in the midst of which appeared the imperial galley surrrounded by others, with these words, *Portum Trajani, S. C.* Trajan also built, at his own expence, a magnificent harbour at Ancona, to open a communication from Italy with the Adriatic sea. The senate and people of Rome, desirous of preserving the memory of this useful work, consecrated it by an inscription, formerly to be seen in that harbour, and which has been preserved by Onuphrus. The victories gained by Trajan over the Persians, and various other nations, made so much noise in the world, that many states, and, among others, the Indians, sent

Adrian, and his successors, neglect the Roman marine.

deputies to him. Eusebius, in his Chronicles, (an. 2108) mentions that this prince established a fleet on the Red sea, for the purpose of ravaging the coast of India; *in mari rubro classem instituit, ut per eam Indiæ fines vastarent.* Scaliger, however, on the authority of Dion, asserts that this project was never carried into effect. It is highly probable, that the fear which the Indians felt of his power, induced them to seek his friendship. Adrian, who succeeded him, made no use of the fleets left by his predecessor, except for excursions of pleasure or convenience. He visited England, Sicily, Sardinia, and Africa, for no other purpose than to converse with men of learning, whose praises he was ambitious to obtain.

24. The succeeding emperors did nothing to encourage the marine; but, though reduced, it still preserved to the Romans, their maritime empire, and, it was under that title, that Pertinax remitted the tribute which these tyrants had imposed on the seas.(89)

25. The reigns of the emperors, who succeeded one another so rapidly towards the decline of the empire, furnish the historian with no remarkable circumstance relative to the marine. Instead of augmenting, or, at least, maintaining it on its ancient footing, they suffered it to decay and fall to ruin; so that when the seat of the empire was transferred to Con-

(89) Stypman. *jus maratim:* part 1, cap. 6, § 16.

stantinople, the emperors beheld themselves threatened by the fleets of nations, issuing from the neighbouring countries of Thrace, and the vicinity of the Palus Meotis. The Goths and Bulgarians, notwithstanding the naval victories of Belisarius and Narses, spread terror in every quarter. The Saracens alone, dared to present themselves before this new capital of the world, and would have taken it, had not their numerous fleet been burnt by the *Greek fires*, an infernal contrivance, which the timid and dastardly besieged, first put into operation.(90)

26. The total destruction of the empire of the Cæsars, was already written in the book of fate. It passed into the hands of the Ottomans, whom the Romans saw rise into existence as a nation, and who first made themselves known by soliciting their friendship as a favour. They beheld this power in-

(90) The *Greek fire* is a horrid compound of pitch, sulphur, and bitumen, which, instead of being extinguished by water, burns in it with more violence. Callinicus, a native of Heliopolis in Egypt, was the inventor of it. The discovery was kept among the secrets of the empire. Constantine Porphyrogenitus, in his instructions drawn up for his son, for the administration of the state, tells him, "When the barbarians shall demand the Greek fire, give for answer, that the angel who brought it from heaven, forbade its being communicated to strangers, and that those of our own people who dared to give it to others, had been struck with lightning on entering the temples."*

* See Gibbon's Decline and Fall, ch. 52.....T.

crease, extend, and grow rich with the spoils of the Roman people, without imagining that it was destined, at a future day, to extinguish their name in the same manner as so many others had been swallowed up in that of Rome.

ARTICLE III.

Of the Modern States who have claimed the empire of the Sea, prior to the discovery of the New World.

MODERN History, also, affords examples of the inordinate claims of certain European powers, to the empire of the sea, and whose conduct in this respect, exhibits a striking contrast to the moderation of other nations, who acknowledge the imprescriptible laws of nature, and the vanity of such pretensions.

Section I.

VENICE.

§ 1. WHILE the Roman empire was crumbling to pieces in the hands of its barbarous invaders, on the western shore of the Adriatic, over which it was destined to rule,(91) a new city rose in splendour

(91) Sannazarius, a celebrated poet, has described, in beautiful verse, the magnificence and maritime sovereignty of Venice :

" Viderat adriacis Venetam Neptunus in undis
Stare urbem, et toto ponere jura mari.
Nunc mihi Tarpeias quantumvis, Jupiter, arces
Objice, et illa tui mœnia martis, ait ;
Si Tiberim pelago prefers, urbem aspice utramque,
Illam homines dicas, hanc potuisse Deos."

from the bosom of the waves. The maritime power of Venice was coeval with her birth, and rapidly grew into maturity and strength. After subduing the Istrian and Dalmatian pirates, she boldly attacked the Normans and Saracens, and vanquished them in a naval battle. She triumphed, afterwards, over the Hungarians, and subjected the Naventines, who infested the Adriatic gulf with their piracies. These first brilliant essays, gained her the great reputation which her marine afterwards enjoyed.

2. The crusades soon furnished an excellent opportunity for Venice to advance her glory. The christian princes having confederated in 1099, to deliver Palestine from the oppression of the Mussulmen, commenced their career by signal victories over the infidels, and by taking the cities of Nice and Antioch. The Venetians, invited to the assistance of the crusaders, arrived in the seas of Asia Minor, with a fleet of two hundred sail, under the command of Henry Contarini, and Michael Vitalis, son of the doge. Their first operation was to take Smyrna. They afterwards seized on Joppa, and, keeping along the borders of Palestine, they aided the French in the capture of Askalon, and other places on that coast.

3. The affairs of the christians in the Holy Land, under Count Baldwin, falling into disorder, they implored new succours from the Venetians. Venice

soon equipped a considerable armament, and entrusted it to the command of Dominichus Michieli, the doge; who, having surprised the Ottomans, while they were besieging Joppa, by sea and land, made a dreadful carnage among them, carried off a number of their vessels, dispersed the rest, and compelled them to abandon their enterprise. After this expedition, Michieli directed his victorious fleet to the coast of Tyre. This city, which so wearied the valour of Alexander the Great, and disheartened that of Baldwin, could not hold out against the skill and courage of the Venetians. They laid siege to it by sea, and took it.

4. The preponderance acquired by the Venetians over the Adriatic sea, in consequence of a long series of victories and brilliant actions, gained them such high consideration and respect, that in 1177, they took advantage of the enthusiasm of Pope Alexander III, to obtain from him a grant of the sovereignty of the sea. The Pope, persecuted by the Emperor, Frederick Barbarossa, took refuge in Venice, where he was received with the honours due to his dignity. The Emperor, wishing to punish the Venetians for their partiality, sent his son Otho against them, with a fleet of 75 gallies. The doge, Sebastian Ziani, met the prince with a fleet of 30 gallies. Notwithstanding this inequality of forces, he engaged the enemy on the coast of Istria, entirely defeated the imperial fleet, took 48 gallies, and brought Otho a prisoner to Venice.

The pope confers on the Venetians the sovereignty of the Adriatic sea.

5. The pope, overjoyed at this success, went out to receive the victorious doge, and, to immortalise his triumph, presented him his ring, with these words: "Use this as a chain, to hold the waves in "subjection to the empire of Venice; with this "ring espouse the sea, and hereafter, on the same "day, in every year, let the celebration of this mar- "riage be renewed by you and your successors. By "this ceremony, posterity will learn, that your arms "have acquired the vast dominion of the waves, and "that the sea is subject to you, as the wife to her "husband."(92) Such is the origin of the pompous ceremony performed every year at Venice on the day of the ascension.(93)

6. By the favour of the christian princes, established in the east, the Venetians obtained many privileges, which gave extension and security to their maritime commerce. They possessed for a long time, the kingdom of Cyprus, obtained, by stratagem,

(92) This ridiculous prediction of the pope, and these singular espousals, did not prevent the French army, some centuries afterwards, from dissolving the marriage. By the treaty of Campo Formio, confirmed by that of Luneville, the 9th of February, 1801, between France and the emperor of Germany, the Adriatic has received a second husband.

(93) *Festo Ascensionis Domini quot annis, ritu solemni, Dux, navi Bucentauro dicta, vectus comitante amplissimo Senatu. ad perpetuandum sibi maris dominium, annulum in medias undas projecit, dicendo: desponsamus te mare, in signum veri et perpetui dominii.* Paulus Merula, *in Cosmographia*, part 2, lib. 4, cap. 3.

Great naval power and commerce of the Venetians.

the Morea, the island of Candia, and a part of the Archipelago. They were masters of Constantinople, Naples, Sicily, and a great part of Italy. The crusades, so ruinous to the princes of Europe, were a source of riches, power, and reputation to Venice. Her citizens had, for a long period, maintained considerable maritime wars against the Greeks, the Saracens, the Pisans, the Genoese, the dukes of Milan, the Turks, and the English. Their superior skill, and naval resources, enabled them to triumph over these nations, and rendered them formidable to all Europe. From the farthest shore of the Black sea, to the coasts of England, they enjoyed an extensive and flourishing commerce. Their fleets were numerous and well equipped; skilful workmen filled their spacious and magnificent arsenal; and they were the only nation that excelled in naval architecture. Able and experienced mariners, and galley-crews, composed of men vigorous and indefatigable, of Cypriots, of Candians, and Sclavonians, rendered their naval forces superior to any in Europe or Asia.

7. The Venetians, with so many advantages at sea, were too conscious of their superiority, to suppose that they ought to behave with justice and moderation towards commercial nations. Their spoliations and vexations, were so provoking, that Helian, the French ambassador, in a discourse delivered in the German diet, did not scruple to compare them to sea-monsters, rocks, and tempests. This harangue,

The power of Venice excites the jealousy of other nations.

full of invective, shews to what degree they had excited the general detestation of (94) other nations.

8. The grandeur and power of Venice had long given umbrage to the princes of Europe. Pope Julius II. in 1509, took advantage of this jealousy, to recover several Italian cities, considered by him as the patrimony of the church. He excited the emperor, the king of France, the king of Naples, the duke of Savoy, and the duke of Ferrara, to join in a league at Cambray, and to determine on the destruction of this ambitious republic. She owed her preservation to dissensions among the combined powers, and to the gold she employed to excite divisions.

9. Venice, having escaped, by refined policy, from such imminent danger, could not guard against the unexpected check she soon after received from the Portuguese, who had sailed round the Cape of Good Hope. The means which she employed to defeat

(94) "They call themselves," exclaimed this ambassador, "the lords and masters of the sea, which ought rather to be common to all nations, or at least, to belong to your imperial majesty, in preference to all other princes; and, as if they were the husband of Thetis, or the wives of Neptune, they espouse the sea, every year, by throwing into it, a ring. Whoever heard of espousing the elements? The Venetians alone are capable of so much arrogance and folly; a nation who have inherited the avarice and cruelty of their ancestors. It is an invention worthy of these insatiable whales, these infamous corsairs, these pitiless Cyclopses and Polyphemuses, who beset every coast, and are more to be feared than the monsters of the deep; than shoals, rocks or tempests."

their enterprises, and to destroy their establishments, by sending engineers, artificers, and warlike stores to the sultan of Egypt, and zamorin of Calcutta, proclaimed her weakness and despair. The commerce of the East-Indies, which the Venetians had carried on almost exclusively, by the Red sea and Egypt, and by the caravans of the maritime cities of Asia, now left her, never to return. Deprived of these resources, Venice ceased to attend to naval affairs, and no longer ranked among maritime powers.

10. This republic, so renowned for its wisdom and firmness, the rival of kings and emperors, and which held, for a long time, the balance of Europe, was supported, during the last century, by its absolute aristocracy, its state inquisitors, and the tyrannical precautions with which it was surrounded. Suspicious and pusillanimous from principle; dark and circumspect through weakness, but always affecting the chimerical sovereignty of the sea, instead of scrupulously observing her promised neutrality, she was so unwise as to form a secret coalition with Austria, during the last war against the French republic. The perfidious plots of the senate against the French were discovered, and the result of this short-sighted policy has been, her subjection to the emperor of Germany, and the merited contempt of the world.(95)

(95) Venice might easily resume its ancient splendour, if the Austrian government, its present possessor, were to put in execution the plan of reform presented to it, in 1801, by Francois-Jacques

The maritime power of Genoa

Section II.

GENOA.

§ 1. THE republic of Genoa, which has always supported a respectable rank among the states of Italy, long maintained the maritime ascendancy she had acquired, by means of her numerous victories over the Venetians, Pisans, and Saracens. Her power made her feared in the Ægean sea, in the Euxine, in Syria and Palestine. She seized on Caffa, a city of Little Tartary, situated on the coast of the Cimmerian Bosphorus,(96) and on the islands of Crete

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Tommasini, the commissary of commercial relations, from Etruria, at Marseilles, contained in his excellent work, printed at Venice, entitled, *Riflessioni sommarie sul modo di sottrarc, il commercio e la marina Veneta da ulterior decadenza, &c.**

(96) Many vestiges of Genoese magnificence are yet to be seen at Caffa. They had possession of it above 200 years. But they were insolent enough to prohibit the Greeks and Venetians from entering any port beyond the mouths of the Danube. They formed a similar project of establishing a right of entry into the Bosphorus. The commerce of Caffa continued to flourish after the Turks had expelled the Genoese from the Crimea.

* We are ignorant of the nature of the plan of M. Tommasini, but the causes which have so totally annihilated the maritime power of the Italian states, by turning the commerce of the east into other channels, still operate in all their force; so that it is not easy to conceive how the ancient splendour of Venice is to be restored. The events which subjected her to the rapacity of France, by whom she was transferred to Austria, are too recent not to be generally known.....T.

and Cyprus, in which she possessed, during a century, the city of Famagousta. Mytelene and Galata, opposite Constantinople, also belonged to Genoa, with half the island of Sardinia, and the islands of Corsica, and Caprara. These establishments enabled the Genoese to carry on commerce with India, across the northern parts of Asia, and the deserts of Arabia, as well as by the Persian gulf, the Tigris and Euphrates, the Black Sea and Mediterranean, in the same manner as had been formerly done by the Greek empire.

2. Celebrated as navigators, the Genoese were so powerful that they assumed, and held, for a long time, the empire of the sea. They frequently cleared the Mediterranean of pirates, and of the Saracens, who infested its commerce. Their friendship was often solicited by the crusading powers, by the Greek emperors, and the kings of France. This republic was not ashamed to see its admirals and seamen enter into the service of foreign governments ; and the famous Doria, the Grimaldi, and Spinola, who maintained the glory of their country, have been, at various times, the terror of the Ottomans and of the English.

3. The maritime power of Genoa was annihilated by the same cause that destroyed that of Venice. The Mediterranean, which had long been the theatre of war between the surrounding nations, failed to produce rivalship, when they ceased to feel any

interest in possessing its exclusive empire. The discovery of another hemisphere, distinguished the age of Christopher Columbus, an enterprising Genoese. When America became known, all maritime enterprises were directed to the Atlantic Ocean. Italy was no longer the centre of the commercial world. From this period, the industry of the Genoese has been inadequate to the maintenance of their marine, which they have, at length, entirely abandoned.

Section III.

PISA.

§ 1. ON the subversion of the Roman empire, Pisa, like many other cities of Italy, erected itself into a republic. By means of the Arno, which served it for a port, and a shelter from storms and pirates, it soon became a formidable maritime power.

2. The riches of Pisa, increased by her immense commerce with the east, raised her to the rank of the most powerful cities in the Mediterranean, where she maintained such numerous fleets, that she was considered as the mistress of the sea.(97) Her name

(97) *Pisanorum præterea clarissimam famam facere bella cum maximis populis, summisque principibus terra marique gesta, quæ tantis eos laudibus celebravere, ut privilegio quodam maris domini vocarentur.* Jo. Florentinus, in vita Simon. Saltar. archiep. Pis. *In Italia tres fuere prepotentes in maritimis rebus urbes, Pisa, Genua, Venitia. Eo magnitudinis rem Pisanam hac in parte erectam memo-*

became celebrated throughout Europe and Asia, in which she possessed many islands and maritime towns, in consequence of the naval wars she maintained with so much glory, against the most powerful nations.(98)

3. Before pope John XVIII. published the indulgence, by which all the catholic states were invited to deliver Sardinia from the Saracens, and had promised the sovereignty of the island to whoever would wrest it from their hands, the Pisans had, in 1003, under Victor Ricucchi, the commander of their fleet, already made those barbarians feel the force of their naval power.(99) They were the first to accept the invitation, and to make preparations. The new fleet, equipped against Sardinia, soon routed that of the Saracens, commanded by their king Musetto, settled in that island. The Pisans destroyed

rant, ut centum eorum familiæ totidem rostratas naves privato sumptu ædificasse et exornasse ad bellum ligusticum dicantur. Klok, *de ærario, lib.* 2, *cap.* 25. Villani, *istoria fiorent, lib.* 7, *cap.* 82.

(98) *Et jure quidem merito Pisani et imperatorum privilegiis, et populorum acclamationibus maris domini dicti sunt: tum quia ante sacrum illud maximi Pontifici Urbani II. classicum (quo terra sancta vestigiis domini nostri pressa nomini christiano fuit restituta.) Pisani Saracenos illas regiones occupantes iteratis classibus, ac validissimis armis, soli jam exagitaverant eorumque vires attriverant: tam quia tam in occidente, quam in oriente, quam plures et maritimas civitates et oppida, ac loca atque insulas possiderent.* Muratori, *rer. italiæ. script. tom.* 3, *p.* 402, *col.* 2, *lit. C.*

(99) Roncioni, *storia di Pisa, MS. lib.* 2.

Great reputation and power of Pisa.

the ancient city of Torri, a Roman colony, seized on Sassari, Orosea, and Oristano, and, after several battles, in which they annihilated the fleet of the enemy, remained masters of the kingdom.(100)

4. So great was the naval force of the Pisans, that, by their numerous squadrons, they were able to resist the most powerful and warlike princes. The Roman pontiff, in 1267, wrote to Henry, brother of the king of Castile, who was desirous of conquering Sardinia, to dissuade him from an enterprise attended by too great difficulty and danger, since he would have to contend with the Pisans.(101)

5. The republic of Pisa, justly merited its high reputation, as well on account of the number of its ships, and its naval victories, as for the considerable privileges granted to it by the emperor, who gloried in having Pisa for a friend,(102) and for the advan-

(100) See my history of Sardinia, vol. 1, p. 108, 109.

(101) *Quoniam ad regnum Sardiniam tuos oculos direxisti, scire te volumus, quod multis sumptibus indigeres, præsertim quum Pisanos haberes adversarios.* Maltei. *Sardinia sacra. cap.* 2.

(102) The emperors, Frederick I. in 1161, Otho IV. in 1209, and Frederick II. in 1220, in confirming the ample privileges granted to the republic of Pisa, express themselves in their diplomas in the following manner: " *Pisanorum merita meritò respeximus, presertim cum per eorum industriam et virium potentiam, honorem et gloriam imperii, atque reipublicæ ipsi præ cæteris gloriose semper adauxerint, et semper adaugere proposuerint. Quanta fideli-*

tageous treaties which it concluded with the most distinguished powers of that age.(103) She conquer-

tate et probitate Pisana civitas a prima sua fundatione caput suum inter alias civitates extulerit, quanta etiam constantia divis antecessoribus nostris regibus Romanerum et imporatoribus fideliter serviendo perseveranter adheseri. Nos per multa scripta et relationes sæpius audivimus, et in super ex ipsorum operum attestatione et ipsum luce clarius constat," &c. Arrigues, king of Jerusalem and Cyprus, by a diploma, in 1291, granted the consulate and other privileges to the Pisans, of which the following is the tenor: "In the name of the holy and undivided Trinity, Father, Son, and Holy Ghost, Amen. We, Arrigues, by the grace of God, 13th king of Jerusalem, and king of Cyprus, make known to all, whom these presents do or may concern, that, by our special grace and favour, we have granted, and do grant, for ourselves and our heirs, to the people of Pisa, and to every individual Pisan, of whatever condition, residing, going, or coming, or who shall enter or depart, from our kingdom of Cyprus, defence and protection in our said kingdom, and in all the ports thereof. Further, by our special grace, we have granted that the Pisans should have in our said kingdom of Cyprus, a Consulate, to bear the staff of office, and to take cognisance of all matters, except what belongs to our city magistracy and our own courts of justice; and that all the inhabitants of our said kingdom, saving our seignioralty, who have any right of action against any Pisan, shall be bound to bring his action before the Consul of that nation; and it is our will and pleasure, that as often as the said Consul shall think proper to send any Pisan to our prison, our officers shall give him all necessary aid and support for that purpose."

(103) About the year 1100, a treaty of peace was concluded between the Pisans and the emperor Alexis, on the following terms: That the Pisan ships should never be insulted in any part of the eastern empire, that all their merchants at Constantinople should have an exchange, a quarter for their residence, a warehouse and church for their nation, and that they might appoint a Consul who should decide all the differences that might arise among them. *See* Codin Curopalata, *de Mensa imperatoris, cap.* 7, § 9.

Pisa, torn by factions, is finally subjected to Florence.

ed Corsica, and the Balearean islands, the cities of Palermo and Carthage, gave considerable assistance to the crusaders, and delivered Alexandria, when besieged by its enemies.

6. Pisa having taken part in the disputes of the Guelphs and the Ghibbelines, whose factions desolated Italy, was alternately on the side of the pope and of the emperor. A disastrous war which it carried on against the Genoese, who took forty of its gallies, and twelve thousand men, inflicted a severe blow on the power of Pisa. It afterwards lost the commerce of the Levant, and their port was taken and destroyed by the Genoese. Tyrants, under the title of counts, arose in the bosom of the state, and hastened its ruin. Ugolino of Gherardeseca, one of the first citizens of Pisa, aided the Guelphs, and declared himself the head of the faction. He was expelled, but was again restored by the Florentines. He was seized at last by the Pisans, and shut up in a tower, where he was left with his children to die by famine.* Other tyrants, who afterwards seized on the government, were also overthrown; but Pisa, though she regained her liberty, lost it for ever, by falling, in 1509, under the power of the Florentines.(104)

* Dante, in the 33d canto of his *Inferno*, has described, in the most affecting manner, the dreadful sufferings and horrid death of count Ugolino and his four sons.....T.

(104) Ammirato *Istoria fiorentina, lib.* 17. Villani, *Histor. fior. lib.* 7, *cap.* 82. Roncioni, *loc. cit.*

Section IV.

THE GOTHS, VANDALS, SARACENS, AND NORMANS.

§ 1. THE Goths and Vandals were the first among the barbarians who spread themselves over the finest part of Europe. It does not appear that they ever undertook any remarkable naval enterprise. Their longest voyages were in the Mediterranean, between Italy and Africa, Spain, and the adjacent islands. The Saracens soon followed the Vandals, and far exceeded them in maritime forces. Navigation, however, is not indebted to their exertions. Their maritime empire was momentary, and extended no further than the coasts of Africa, Spain and Sardinia, which they invaded. After the Saracens, the Normans infested the coasts of Britain and France. They sent, at various times, from Norway, considerable fleets, and numerous bodies of emigrants. They finally established themselves in Normandy, from whence they cruised along the coasts of Spain, entered the Mediterranean, through the straits of Gibraltar, and conquered the kingdom of Naples and Sicily. Though the Normans made longer voyages than the other barbarians, their navigation was very limited, as they seldom extended their excursions beyond the coast. Their empire on the sea was exercised in occasional combats, and in pillaging the neighbouring countries.

Naval armaments of the crusaders.

Section V.

THE CRUSADES.

§ 1. A SUDDEN inspiration, the enthusiasm of christian piety, in 1096, prompted the kings, princes, ecclesiastics, and people of Europe, to make voyages to the Holy Land. The crusaders, destitute of a marine, were obliged to borrow ships, at a great expense, from the Venetians, the Genoese, and the Pisans; and, in the expedition of Charles VI. from the Hollanders and Zealanders, who were enriched by the freight, which they very prudently obliged the crusaders to pay in advance. These enterprises did not correspond with the motives which gave them birth. A noble ambition, and a religious zeal for the deliverance of the Holy Land from the tyranny of infidels, actuated the first crusaders; but this zeal soon degenerated into the most extravagant, cruel, and disgraceful fanaticism. The sanctity of the object in view, was constantly belied by their conduct; they spoke of nothing but virtue, while they dishonoured its name by their numerous vices. The kings of France, leaders of these expeditions, hastily built some ships at Marseilles, and took others by force, along the coast of Languedoc and Provence. Armaments thus made, without choice or preparation, could hardly insure success. Accident, alone, decided on the number of vessels, the manner of equipping them, and on the route they were to take. All these equipments were forced exertions, that disappeared with the extraor-

dinary enterprise for which they were destined. Useless delays, abortive projects, and shipwrecks, followed in succession. These attempts, nine times repeated, with the same disasters, gave, however, to the fleets of the crusaders, a maritime preponderance in the Mediterranean and Archipelago; but it vanished as soon as the jealousy of the English, and the bad faith of the Greek emperors, had rendered ineffectual those establishments which France, exhausted by so many losses, was unable to protect.(105)

(105) "As to the effects of the crusades," says M. Chapus, "admitting that they have cost Europe many men, and a great "deal of money, and have communicated to us diseases, with "which we are still afflicted; yet, it is certain, that the crusades di-"minished the evils of the feudal system, by augmenting the power "of the kings, and the influence of the common people, and that "they have imparted an incredible increase and spring to com-"merce in every part of the world." Page 180.

ARTICLE IV.

Of the States who have claimed the empire of the Sea, since the discovery of America.

§ 1. THE singular property of the magnet, of pointing towards the poles, was unknown to the ancients. Numerous experiments with the magnetic needle, suggested the idea of the mariner's compass.(106) As soon as the pilot found, in this instrument, a faithful guide in his course, he became more bold and adventurous. This boldness gradually led to the opening of a new passage to India, by the Atlantic ocean, and to the discovery of America. From that period, the western nations of Europe, in search of gold and silver, at the price of a thousand dangers, and of every crime, burst the barriers which seemed to have been placed between the two hemispheres.

(106) The discovery of the mariner's compass belongs to France: She was the first, among the nations of Europe, after the 12th century, to make use of it, under the name of *marinette* or *marinicre*. See the proofs in support of this opinion in my *Dissertation on the Mariner's Compass, 2d edition, Venice,* 1797.*

* Dr. Robertson, in his History of America, vol. 1, book 1, gives the merit of this discovery to *Flavio Gioia*, a Neapolitan, and native of Amalfi, about the year 1302. It is said by some, to have been used at Venice, in 1262, and by others, to have been known to the Chinese, above 1100 years before the christian æra.....T.

2. Portugal, Spain, Holland, England, and France, each in their turn, made discoveries in the new world.* A jealous and restless ambition impelled these nations, with the exception of France, to employ every means of tyranny to keep the exclusive possession of their respective discoveries. Hence that despotism which they have severally exercised in order to obtain the exclusive empire of the seas, to the prejudice of each other. We shall briefly examine their conduct, to show how each nation abused its power, when the superiority of naval force gave it a maritime preponderance over its rivals.

Section I.

PORTUGAL.

§ 1. THE Portuguese first made the ocean an avenue to conquest. Prince Henry, son of John I. king of Portugal, conceived the plan of carrying on a commerce with the coasts of Africa. The study of astronomy, and the Observatory erected at Sagres, a city of Algarva, led to the invention of the Astrolabe. He was the first to perceive the advantages to be derived from the compass, already known in Europe, but which no one had yet ventured to use in navigating the ocean. The pilots formed under the direction of this prince, discovered, in 1419, the island of

* Dr. Robertson, in his History of America, vol 1, book 1, has given a learned and instructive view of the progress of commerce and navigation.....T.

The Portuguese discover the Cape of Good Hope.

Madeira. John II. the son of Henry, following the steps of his father, made a further application of the compass to navigation, and, by its help, the Portuguese arrived at the Cape, situated at the extremity of Africa, called at first the Cape of Storms, afterwards the Cape of Good Hope, because it opened to them a passage to the East-Indies.(107) King

(107) It is pretended, that Hanno, to whom the Carthaginian senate, had given the command of 50 vessels and 30,000 men, for the purpose of establishing colonies, passed the straits of Gibraltar, sailed along the western coast of Africa, and arrived at the borders of Arabia, where he stopped for want of provisions. A relation of this voyage, known by the name of the *Periplus*, was made in the Punic language. (See the learned researches on the state and progress of navigation among the ancients, by M. Peuchet, inserted in his *Bibliotheque Commerciale*, p. 101, 1803.) Able philologists assert, and Mr. Dodwell seems to have proved it beyond all controversy, that the Periplus is not the work composed by Hanno. It is certain, however, that the Carthaginian navigator did make a relation of his voyage. It is mentioned by Aristotle, Pliny, and Pomponius Mela. This is sufficient to show that the ancients believed it practicable to sail round Africa. Cornelius Nepos says, that in his time, Eudoxus, wishing to escape the anger of king Lathyrus, embarked in the gulf of Arabia, and continued his voyage, till he arrived at Gades. M. Huet pretends, that from the time of Solomon, the Cape of Good Hope was known and frequented. If all these relations are true, the Portuguese merely found out a route, the knowledge of which had been lost. The second discovery, however, is not less glorious than the first.

" If the Europeans could, one day, efface the remembrance of " the crimes with which they have been stained since the discove- " ry of the two Indies; if the sweets of fraternal intercourse, " founded on reciprocal wants, should ever become the only ties to " unite the inhabitants of the old and new world; then might fu- " ture generations, struck with astonishment at the bold conceptions

Emanuel prosecuted the schemes of his predecessor; he dispatched, on the 10th July, 1497, a squadron of four vessels, under the command of Vasco de Gama, who, after running along the eastern coast of Africa, discovered Indostan.(108)

2. King Emanuel, profiting by the discoveries made by several Portuguese in different parts of India, resolved to make a permanent establishment there, the better to secure his dominion over the various settlements. In 1505, he sent Francis Almeyda to India, in character of viceroy, with a fleet of twenty-two ships. During his route, this navigator built several forts to protect the navigation of the Indies, and arrived on the 6th April at the Cape de Verd Islands. The king of Calicut, leagued with the Egyptians and Arabs, and, jealous of the successes of the Portuguese, attacked their squadron with a fleet consisting of near two hundred vessels. Against these numerous enemies, Almeyda opposed his courage and intrepidity, and gained over them a signal victory. At the same time, the son of Almeyda, di-

" of their ancestors, raise a monument to the genius of navigation. " This genius would appear with her attributes, a globe and a com- " pass, before prince Henry of Portugal; while the Indian, the " founder of nations, the African freed from his fetters, the Peru- " vian escaped from death, would bow before the European, whose " power would at length unite, in mutual embrace, the remotest " regions of the globe." Arnould, *System. marit. et polit. ch.* 2.

(108) See my *dissertation on the mariner's compass*, ch. 3, 2d edition, Venice, 1797.

rected to cruise with nine vessels towards the Maldives, in order to intercept the Arabian ships from the Moluccas, accidentally fell in with the coast of the island of Ceylon, before unknown to the Portuguese, took possession of it in the name of his king, and caused a marble column to be there erected, bearing the arms of Portugal.

3. Tristan d'Acuna, accompanied by Alphonso Albuquerque, set sail from Portugal, in 1508, with a squadron of eighteen ships, and made a descent on the island of Madagascar, to discover the character of the inhabitants and the resources of the country. The arrival of Tristan in India, gave new vigour to the Portuguese, who, during four months had been contending with the king of Calicut. He distinguished himself by many striking actions of courage and moderation, and returned to his country with five ships. Albuquerque, who remained in India, took every care to render the flag of his king respected. He cruised with several vessels, in order to keep in awe the countries surrounding the gulfs of Arabia and Persia. Almeyda, on his part, had formidable enemies to combat. The king of Calicut, supported by all the maritime forces of Malabar, and a multitude of Arabian vessels, engaged him in numerous conflicts, and with various success. Laurentius Almeyda, son of the viceroy, perished in one of these engagements, after exhibiting strong proofs of valour. To avenge the death of his son, the viceroy

collected a squadron of ninety sail, attacked the fleet of the enemy, consisting of more than one hundred ships, and entirely routed it. This victory secured to the Portuguese, the empire of the Indian sea.

4. Albuquerque, having become viceroy, after the death of Almeyda, supported the dignity of his station with new splendour, gave reputation to the Portuguese maritime power in India, and filled their enemies with terror. After the capture of Goa, this warrior did not remain inactive, but attempted to extend his conquests. He equipped twenty-three vessels, sailed towards Sumatra, subjected Malacca to his arms, and took vengeance for the injuries his nation had suffered. These successes were followed by many others. He humbled the pride of the kings of Calicut, and of the Moluccas, and of other sovereigns in India, by obliging them to pay tribute to the king of Portugal. In all his expeditions he gave the most striking proofs of prudence and valour.(109)

(109) We may here recollect the jealousies, which the intrigues of the Venetians with the sultans of Egypt, excited against the Portuguese. The Venetians, who, before the discovery of the Cape of Good Hope, carried on by Egypt and the Red Sea, a great part of the commerce of the world, lost it by that event. The Portuguese, under the celebrated Albuquerque, encouraged by the Arabs, who wished to monopolize all the commerce with India, acquired a powerful empire on the Indian Ocean, and the Red Sea. The Venetians receiving little or no aid, from the natives of the country, and obliged to struggle against the difficulties of

The great services of Albuquerque are ill requited.—His death.

5. Albuquerque, who laid the foundation of the Portuguese empire in India, carried the glory of its name to the extremities of the earth, subjected to the dominion of his king, the whole coast from the river Indus to Cape Comorin, discovered several islands, subdued Malacca, conquered the kingdom of Ormus, and vanquished numerous and powerful foes, saw envy and malice at last rise against him, to blacken his character in the eyes of his sovereign. The too credulous monarch recalled him, and sent another governor in his place. This great man was so afflicted at receiving such an ill requital, for all the services he had rendered his king and country, that he fell sick soon after his return from Ormus, and died on board his ship in the port of Goa.

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transporting from Alexandria to Suez, the frames of vessels sufficient to contend with the Portuguese on the Red Sea, were forced to abandon their project. The nations of the West were then plunged in the darkest ignorance, and did not suspect that any great advantages were to be derived from commerce. The Portuguese, by encouraging voyages and discovesies, became more enlightened than the other European nations, and the vast genius of Albuquerque knew how to appreciate the importance of a commercial intercourse with India. He proposed, in case of any great obstacles to his schemes, to cut through the banks of the Nile, in Upper Egypt, and, by turning the course of that river towards the Red Sea, not only to draw off, by that means, a great part of the commerce of Africa, but to convert Lower Egypt into a desert, so as to prevent any colonization of the country, and thus erect a strong barrier between the Mediterranean and the Red Sea. The inhumanity of this scheme disappeared with the political necessity which dictated it.

Contests between the Portuguese and Spaniards.

6. After the death of Albuquerque, the Portuguese continued to send viceroys, ships and troops to the Indies, to extend their commerce, and preserve the conquests they had made. In these opulent regions, the Portuguese have experienced an alternation of good and ill fortune. They have been often victorious, and often vanquished. But the empire of the sea, which they preserved, gave them, in that quarter, a preponderance over other nations.

7. The Portuguese and Spanish were too near neighbours to remain friends long. The discoveries made by each, produced new and frequent dissensions between them. Don Alphonso, king of Portugal, entered into a violent dispute with Ferdinand and Isabella, on the subject of the Canary islands, claimed by both. This difference, however, was not attended with serious consequences. Both monarchs preferring negotiation to war, entered into a convention, by which it was definitively settled that the Azores, Guinea, and western Ethiopia, should belong to the Portuguese. Pope Sextus IV. by his letters, dated at Rome, the 11th of the calends of July, confirmed this treaty as well as the bulls of Martin V. Eugene IV. and Nicholas V.

8. The disputes which had divided these two neighbouring nations, were renewed with more violence, under the emperor Charles V. Sebastian Cano, having reached the Moluccas, by the strait which he and Magellan discovered, persuaded the emperor

that these islands ought to belong to him, as the Portuguese had not penetrated to them, and they were, besides, situated within the part which fell to him, on the division made by pope Alexander VI. These reasons, which appeared very forcible to the emperor, since they accorded with his wishes, seemed highly unjust to John III. king of Portugal, whose interest was in direct opposition to that of the Spanish king. These princes, though they did not possess very implicit faith in the power of the pope to bestow and take away kingdoms, yet made use of his bull to support their respective claims. Unable to terminate their differences by force of argument, they at length had recourse to arms. They made war on the Moluccas, and by turns expelled each other from those islands; but the Portuguese at length gained possession, and an end was put to the contest.

9. The Portuguese having, in 1581, submitted to the Spanish yoke, Philip II. king of Spain, attempted to degrade their character, at the same time, concealing under honourable pretexts, the destructive means he employed to succeed in his design. His successor, Philip III. scrupulously adhered to the policy of his father; he suffered the Portuguese to be deprived of their numerous conquests, which had cost them rivers of blood, and procured them so much power and glory. Philip IV. weak as his father, attacked, and treated with contempt, their administration, their privileges, their manners, and every thing they held most dear. A conspiracy, which had been

preparing, with unexampled prudence, for three years, burst out on the 3d of December, 1640. The government of the king of Spain was ignominiously proscribed, and the duke of Braganza, under the name of John IV. was placed on the throne of his ancestors. Portugal became again master of Brazil; but lost the island of Ceylon, and never recovered any of its possessions in India. In 1688, a treaty of peace was concluded with Spain, in which the latter acknowledged the independence of Portugal, restored its ancient possessions in Europe, and on the coasts, excepting the town of Ceuta in Africa, which remained to the Spaniards. Notwithstanding this fortunate event, Portugal has not recovered from the state of weakness to which it was reduced by the Spanish government, by continual wars, and still more by its commercial connexions with England. It has not, at present, a twentieth part of its ships of war remaining for the protection of its colonial commerce. Its political existence is precarious, and upheld only in consequence of the interest which the great powers of Europe have in preventing it from becoming a province of Spain.

Spain, its first maritime expeditions, in the reign of Ferdinand.

Section II.

SPAIN.

§. 1. ANTECEDENT to the reign of Ferdinand V. the history of Spain offers nothing remarkable, concerning its marine. This prince, born with an immeasurable love of glory, was often led, by his ruling passion, beyond the bounds of moderation and justice. His marriage with Queen Isabella, a princess of rare merit, united the crowns of Castile, Leon, Arragon, Navarre, and Granada. All these kingdoms, governed with great political ability, and which gave him a preponderance over the other powers of Europe, were not sufficient to satisfy his ambitious mind. His views were more extensive: he caused ships to be built, by which he might acquire new kingdoms, and the empire of the sea, to which he aspired.

2. The first maritime expedition of Ferdinand, was directed, in 1446, against the Canary islands, to reduce them under his power. He, at the same time, dispatched twenty-five ships to Guinea, where he established a very advantageous trade, giving, in exchange for valuable commodities, shells, esteemed by the inhabitants of that country, more precious than gold or silver, as they imputed to these marine productions, the power of preserving them against thunder. These ships returned richly laden, but Ferdinand derived no advantage from the voyage, as they all fell into the hands of the Portuguese, who

were then at war with Spain. About the year 1484, he sent a considerable fleet, consisting of seventy sail, under the command of Gonsalvo Hernandez de Cordova, called the great captain, to the aid of the king of Naples. This general recovered Calabria, and wrested the city of Naples from the hands of the French.

3. These first essays of the marine of Ferdinand, prepared the way for the great discoveries made during his reign. While the Portuguese were advancing along the coasts of Africa and Asia, the Spaniards discovered and conquered the West-Indies, or America. Christopher Columbus, a Genoese, set sail, on the 3d of August, 1492, from the port of Palos, in Spain, with one ship and two brigantines, which Ferdinand and Isabella had entrusted to his command. This armament cost only ten thousand ducats. The first land which he discovered, on the 11th of October, in the same year, was *Guánahani*, one of the Lucayos, or Bahama islands, to which he gave the name of *Saint Salvador*. He afterwards discovered the islands of Cuba and Hispaniola. Americus Vespucius, a Florentine, made a voyage to America in 1497, and claiming to be the first who discovered Terra-Firma, he gave his name to the country, since called America.(110)* Ferdinando Cor-

(110) See *Ricerche istoriche critiche circa le scoperse d'Americo Vespucci del Sig.* Bartolozzi. *Elogio d'Americo Vespucci del* Canova. *Vita del Vespucci del* Bandini.

* *Alonso de Ojeda,* who had accompanied Columbus in his second voyage, was the commander of the squadron, on board of which

Discoveries of Ferdinand confirmed by the Pope.

tez, in 1518, and Francis Pizarro, in 1525, greatly extended the conquests of Spain in the new world. Long voyages, undertaken with success, the discovery of immense countries, separated from our continent by a vast ocean, the conquest of several kingdoms, advantageous establishments on the coasts of Africa, in the Canaries and the Indies, the subjection of barbarous and unknown nations, and the inexhaustible treasures acquired by the crown, immortalized the reign of Ferdinand, and transferred the empire of the Indian seas to Spain.

4. Ferdinand, after the example of the Portuguese, solicited from the court of Rome, a bull, granting him a full title to all the conquests made, or to be made, in the new world, on condition of his converting to the Catholic faith, the inhabitants of those barbarous countries. Alexander VI.* by a bull, dated at Rome, the second day of May, 1493, gave to Ferdinand and Isabella, sovereigns of Castile and Arragon, the new world which had just been discovered. It was under his pontificate that the limits were fixed between the Portuguese and Spanish, by dividing the Indian islands, then discovered, by

Vespucci served in a subordinate capacity. See Robertson's America, Book II.....T.

* This pontiff, whose ridiculous pretensions to power are set forth in this curious instrument, was the most infamous wretch that ever disgraced humanity.....T.

means of lines corresponding to the degrees in the heavens; assigning, as a boundary to Spain, a meridional line, drawn from pole to pole, a hundred leagues west of the Azores.(111)

5. The legal property in the seas and kingdoms of the two Indies, thus granted to Ferdinand by the papal bull, confirmed his acquisitions; and he now turned his attention to the shores of Africa. The Barbary pirates, who ravaged the coasts of Spain, took refuge in the harbour of Oran, which served for a place of

(111) The fourth article of this bull, is in the following words: "*Et ut tanti negotii provinciam apostolicæ gratiæ largitate donati, liberius et audacius, assumatis motu proprio, non ad vestram, vel alterius pro vobis super hoc nobis oblatæ petitionis instantiam, sed de nostra mera liberalitate, et ex certa scientia, ac de apostolicæ potestatis plenitudine, omnes insulas et terras firmas, inventas et inveniendas, detectas et detegendas versus occidentem et meridiem, fabricando et construendo unam lineam a polo arctico scilicet septentrione, ad polum antarticum, scilicet meridiem, (sive terræ firmæ et insulæ inventæ, et inveniendæ sint versus Indiam, aut versus aliam quamcumque partem,) quæ linea distet a qualibet insularum quæ vulgariter nuncupantur,* de los Azores, y Cabo Verde *centum leucis versus occidentem et meridiem, per alium regem aut principem christianum non fuerint actualiter possessæ, usque ad diem nativitatis domini nostri Jesu Christi proximè præteritum a quo incipit annus præsens* 1493, *quando fuerint per nuncios et capitaneos vestros inventæ atquæ predictarum insularum; auctoritate omnipotentis Dei nobis in Beato Petro concessa, ac vicariatus Jesu Christi qua fungimur in terris, cum omnibus illarum dominiis, civitatibus, castris, locis et villis, juribusque, et jurisdictionibus, ac pertinentiis universis vobis, hæredisbasque,*" &c. *See* Leibnitz *codex jur. gent. diplom. p.* 165, *et* 203. Hieron a Monte. *tract. de fin. regundor. cap.* 7. § 8.

deposit, and an asylum. Cardinal Ximenes, archbishop of Toledo, undertook to exterminate them. He equipped for that purpose, an armament of eighty ships, three gallies, and a large number of transports, with ten thousand infantry, and four thousand cavalry. He landed in Africa without opposition; and the city of Oran was taken. The capture of the place was effected with so much expedition, that the Spaniards considered it as miraculous. Another naval armament was dispatched, at the same time, and the Venetians were compelled to restore the places taken by them, which were dependencies of the kingdom of Naples. These two expeditions, attended with such rapid and happy success, gave the Spaniards a great preponderance in the Mediterranean.

6. The formidable Barbarossa having succeeded, in 1535, to the authority of his brother Horuc, in the government of Algiers, seized on the kingdom of Tunis. This conquest so alarmed the christian princes, that they formed a league against the power of an enemy so much to be dreaded, and a cruel foe to their religion and dominions. Charles V. of Austria, who had succeeded Ferdinand, and who united the crown of Spain to that of the chief of the Germanic empire, put himself at the head of this famous coalition. The fleet of the confederates, consisting of three hundred ships, set sail from Cagliari, in Sardinia, the place of rendezvous, touched on the 25th of June, at Porto Farina, six leagues from Tunis, attacked and took Fort Goletta, and, soon afterwards

gained possession of Tunis. Charles V. after replacing the lawful king on the throne, and compelling Barbarossa to seek his safety in flight, prepared to return to Europe. He touched at Trepano, Palermo, and Messina, and entered Naples in triumph. Animated by such glorious success, the emperor was desirous, in 1540, to conduct a similar enterprise against Algiers; but his measures, not being so well concerted as in the former expedition against Tunis, it was not attended with equal success. Having, inconsiderately, put to sea with a numerous fleet, at an unfavourable time, he had to contend with winds and tempests. The ships, buffetted by a furious storm, were dashed against each other, or broken to pieces on the rocks; others, with their crews, were swallowed up in the waves. One hundred and fifty large ships, and fifteen gallies, perished by this disastrous incident, and Charles, with the utmost difficulty, reached Carthagena in safety, with the wreck of his fleet. His great exertions, and lofty pride, procured him only empty renown, the exhaustion of his dominions, and weariness of life.

7. Philip II. son of Charles, who succeeded his father as king of Spain, had little success in his expeditions against the Barbary powers. His marine had not yet recovered from the losses it had sustained under his predecessor. Furious with indignation against Queen Elizabeth, and eager to take vengeance on that princess, for uniting with the Dutch, who had shaken off the Spanish yoke, Philip undertook the

conquest of England. During three years, he employed all the ship carpenters of Spain, Portugal, and of Naples and Sicily, which then belonged to Spain, in building ships of extraordinary size and force. This fleet, which, before it left the port, had received the title of *invincible armada*, put to sea in 1588. It consisted of one hundred and thirty ships, nearly one hundred of which were the largest that had yet appeared on the ocean. Twenty caravels, or light ships, followed the fleet, manœuvred and fought under its wings; but the ships were so heavily armed, and so badly managed, that they would scarcely move, take the wind, go about, or obey the helm in a storm. The sailors were as dull as the ships were heavy, the pilots almost as ignorant as the sailors, and the admiral, the duke de Medina-Sidonia, who possessed nothing but birth and fortune, was destitute of energy and experience.

8. Elizabeth, believing in the weakness of her enemies, and their want of nautical skill, rested her hopes of victory on their inexperience. The English avoided being boarded by their heavy machines, used their artillery with effect, burned several of the ships, took the galleons, and disabled the rest. A furious storm arose during the fight, drove a number of the Spanish ships on the western coast of Scotland, and others on the Irish coast, where they were taken or sunk. Of this invincible Armada, scarcely twenty ships returned to Spain, where this disaster spread a consternation and despondence, from which

The Spanish marine neglected.—Philip V. attends to its revival.

the nation never recovered. By the loss of an armament which had cost so much preparation and expense, and which exhausted its revenues and forces, Spain became completely cast down and disheartened.(112)

9. The Spanish marine continued to be wholly neglected until the reign of Philip V. This prince had no sooner dispersed the enemies that opposed his advancement to the throne, than he meditated the restoration of the marine, which at that period was so weak, that the Barbary corsairs carried off with impunity, merchant-ships, captured at the mouths of the Spanish harbours. He built some ships, purchased others of foreigners, and formed establishments favourable to navigation. Philip V. was soon able to send out two cruising squadrons, one to the Mediterranean against vessels sailing under the imperial flag; the other, against the corsairs and smugglers.

(112) From a hatred of Philip II. who was regarded as a common enemy, all Europe applauded the glorious success of Elizabeth. The Venetians, on receiving the news of the defeat of this famous and unfortunate armada, exclaimed, *Oh che Donna, se fosse Christana.* Oh what a woman, if she were but a christian! All had in their mouths, these words: *Omne malum ab Hispania, omne bonum ab Aquilone.* (*Memoirs* of Birch.) A medal was struck on this occasion, in England, on which the Spanish fleet was seen flying, under full sail, and these words, *venit, vidit, vicit.* Another medal, represented the Spanish fleet in disorder, and their vessels burnt, with the following legend, *Dux femina facti.* The most remarkable one was that in which the ships are seen beaten by the storm, and running against each other, with this noble and pious inscription: *Afflavit Deus, et dissipantur.*

The Spanish navy augmented by Philip V.

He armed, at the same time, a large fleet of ships, built in the ports of Cadiz, Malaga, Carthagena, and Alicant. In 1718, his marine consisted of fifty ships of the line, dispersed over the seas of Sicily and Sardinia, of bomb-ketches, fire-ships, and batteaux, for the purpose of landing troops to take possession of the island of Sardinia.(113) He had besides a powerful squadron in the Indian seas, to check pirates, and five ships of war to convoy merchant vessels from New Spain.

10. In 1733, the Spanish marine being employed in Africa, in the recapture of Oran, and in Italy, the Catholic king was obliged to form new armaments; but during this war his ships were employed in transporting troops into Italy, and in voyages to the Indies. After peace was concluded with the emperor, another war arose with England, that gave the utmost activity to the fleets of Spain. New Georgia, Porto-Bello, St. Augustin, and Carthagena, in America, became the scenes of action. The defence of the latter place, will ever be considered in history as one of the most illustrious monuments of Spanish valour. In the Mediterranean there occurred only the engagement off Toulon, in 1744, which gained the Spanish Admiral, Don Pedro Navarro, the pompous title of *Marquis de Victoria.*

11. The Spanish marine, having no further occasion to signalize itself, remained inactive for a long

(113) See *my geographical, political, and natural history of Sardinia*, vol. 1, page 161, &c.

period, and gradually fell to decay. The Marquis d'Ensenada, being made minister under Ferdinand VI. exerted himself to raise it from a state of ruin. He procured English shipwrights, French architects and geometricians, formed schools, fortified the harbours, filled the dock-yards and arsenals, and made, or improved, other establishments, connected with this great object. The disgrace of this minister was not felt in the department which he quitted. They continued to work and build ships, and when Charles III. ascended the throne of Spain, the marine was in a prosperous state.

12. According to the representation given by the learned M. Bourgoing,(114) it appears, that after the peace which terminated the disastrous war of 1761, Spain had only thirty-seven ships of the line, and thirty frigates. In 1770, she possessed forty-one ships, from 58 to 112 guns, twenty-two frigates, eight large hoys, nine xebecks, and twelve smaller vessels of war, amounting, in the whole, to one hundred and two vessels of all sizes. In 1774, she had sixty-four ships of the line, eight of them three-deckers, twenty-six frigates, nine xebecks, and twenty-eight smaller vessels of war; in all, one hundred and forty-two. In 1778, Spain reckoned sixty-seven ships of the line, thirty-two frigates, besides other vessels, making in the whole one hundred and sixty-three; and at the end of the war, notwithstanding all the

(114) *Tableau de l'Europe Moderne, par* M. Burgoing, *tom.* 2, *p.* 128.

losses she suffered, she retained nearly the same number. At the close of the year 1792, when war was declared against France, she possessed eighty ships of the line, six of which were wholly incapable of service, and fourteen hardly fit for sea. The war against the French republic has not been injurious to her marine. The present contest with England, which remains to be terminated, will leave her many losses to repair; and the Spanish government is now engaged, with activity, in rendering its marine capable of seconding the efforts of France against the usurpations of their common enemy.

Section III.

HOLLAND.

§ 1. HOLLAND is nothing more than a bank of sand and mud, raised by accident, and which accident may, at any time, destroy. The situation of its sunken land, below the level of the sea, has obliged the inhabitants to oppose the violence of the waves, by dikes, to dig canals in every direction, large enough to facilitate internal communication, and draw off the stagnant waters which covered its surface. Familiar with water, the Hollanders have been compelled to seek their chief subsistence from the sea. Necessity, which first made them fishermen, soon taught them how to cure and preserve their fish, to make them an object of commerce, procure in exchange from neighbouring countries, what they

wanted in their own, and thus augment the pleasures of life. The riches which this industry brought into the state, enabled them to pursue other branches of trade that opened new sources of wealth. The strength of Holland increased with her opulence ; she dared to take arms to obtain her freedom, and she succeeded in the attempt. Commercial and industrious, she knew how to create, at the same time, territory and liberty, commerce and colonies, a useful navigation and a formidable marine. Emerging by the force of genius from the bosom of the ocean, she seemed to have more right than any other power to rule over its waves.

2. The decay of the Spanish marine, occasioned by the many losses which it sustained under Philip II. and by multiplied and ill concerted expeditions, transferred the sceptre of the sea to the hands of the Dutch. The pride of Spain could not have been better humbled than by the prosperity of a people whom its oppressions had compelled to throw off the yoke it had imposed. Having formed their country into a federal republic, the Dutch, stimulated by revenge and by their wants, commenced privateering, and formed a marine at the expense of the Spanish, whom they every where beat, and of the Portuguese, whom they detested. France and England, who saw nothing in the progress of this rising republic, but the humiliation of the Spanish monarch, assisted the Dutch to preserve their conquests and spoils, the whole value of which was not then known. Thus

Greatness and superiority of the maritime power of Holland.

the Dutch gradually secured their establishments wherever they wished to carry their arms, and strengthened themselves in their new acquisitions, before other nations became jealous of their power. By their industry, they gradually gained possession of all the commerce of that age; and, by means of their squadrons, became masters of every sea.

3. The power of Holland soon essayed its strength, and made itself known in the political world, by its energy, its economical resources, and its good fortune. The glory of Spain and Portugal, eclipsed on the ocean, disappeared before her fleets. From the suppliant she became the ally of France. The forces which she displayed abroad were the fruits of her maritime exploits. The riches acquired from the Spanish and Portuguese in Asia, contributed to support her mighty armaments. Her seamen appeared like conquerors on those distant coasts, and took possession of the most advantageous positions. If Holland did not, at once, snatch from her enemies all the commerce of those opulent regions, she strengthened herself there in such a manner, as to indicate that preponderance which she eventually obtained. She has abused this ascendancy by rendering the commerce exclusive, by seizing on the Spice-Islands, and monopolizing the spice-trade.

4. By its maritime prosperity, this republic was in a situation to enter into close connections with the northern powers, and to exercise great influence in that

quarter of Europe. In consequence of these relations and this influence, it has, more than once, become the guarantee, or armed mediator, in the wars of the north; and it has always retired with the honour and the advantage of having preserved an equilibrium, and a mutual independence between these northern powers. This wise and generous policy enabled Holland to save Denmark, at the brink of ruin, under Frederick III. to repress the turbulent ambition of Charles Gustavus, by a maritime diversion, that raised Poland, just ready to sink under his power; to secure to Dantzick the condition it enjoys to the present day, and to produce those circumstances which led to the peace of Oliva, in 1760. Denmark was desirous of attacking Sweden and the house of Holstein-Gottorp. Holland knew how to check, by similar means, this spirit of usurpation, and to re-establish the balance among the northern powers, in 1700, by the treaty of Traventahl.

5. This republic, led astray, by the war of succession, from its only true policy, gradually lost all its influence in the north of Europe, while it acquired none in the south. Spain, claimed by the house of Austria, and almost wrested from Philip V. was about to reunite, on the brow of Charles VI. the crowns worn by Charles V. The English who saw, with jealousy, that Holland disputed with them the empire of the sea, drew her into that famous coalition, and succeeded in overwhelming her with debt. She dearly

Holland takes part in the wars of the south.—Decay of her power.

purchased the barrier treaty, in 1709. She was afterwards repayed with ingratitude by the court of Vienna, and compelled to sign the treaty of 1715, which that court has since trodden under foot. England, by taking on itself two-thirds of the maritime expenses, and throwing upon Holland the same proportion of the expenses of the land service, so far diminished the naval forces of that republic, while its own were augmented in equal proportion. "From that "time," says the judicious author of the work, entitled, *The Wealth of Holland*, "the Dutch did noth- "ing worthy of the maritime reputation they had "acquired. In 1712, their colonies were laid under "contribution by the French; the Swedes captured "their merchant ships, without any appearance of "opposition on the part of the republic. It was not "till 1715, that it joined the English fleet of twenty "sail, with twelve ships of war, in order to protect "the commerce of the two nations in the Baltic, per- "petually harrassed by the Swedes, who, in the war "against Russia, continued to seize all vessels bound "to that country. The Dutch had even to suffer "from the Algerines. In 1721, it was calculated "that those pirates had taken more than forty valu- "able ships, with their cargoes, worth above six "millions, besides nine hundred seamen, reduced to "slavery." From this period, the fleets of Holland are no more to be seen, and the excellent marine discipline of the Batavians has fallen into neglect. A Van Tromp, a Ruyter, or Evertson, has not again appear-

ed; England, alone, with her squadrons, covers every sea, where she rules with the most disgusting tyranny.(115)

ARTICLE V.

*Parallel between England and France, in regard to their Claims to the Empire of the Sea.**

§ 1. IN this article will be comprised all that was intended to be said of England and France, in order to bring into comparison the spirit by which these two powers have long been actuated. At the same time, I shall submit to the judgment of the reader, the inordinate pretensions of the first,

(115) See *La politiques de tous les Cabinets de l'Europe*, with the learned notes of M. Segur, the elder, vol. 2, from which the above facts have been taken.

* It may be proper to inform the reader, that the following article, as well as the former part of this chapter, excepting twelve pages, has been added by the author, since the former edition of his work, printed in 1796. If, instead of a partial discussion of the political conduct of two great and rival nations, our author had confined himself to a concise and luminous description of the progress and present state of their marine, it would not have been thought an unnecessary digression from the subject of his work. The zeal, not to say, partiality, which he has manifested in the cause of France, induces a suspicion, that he has not been careful to hold the balance with an even hand, nor to preserve that spirit of moderation and justice which belongs to a neutral character.....T.

England has abused her power.—The ancient Britons.

who, in contempt of all laws, has, for ages, used every means to obtain the empire of the sea, and the moderation of the second, who has always resisted those pretensions, and has endeavoured to maintain the freedom of navigation by an uniform opposition to her rival. England has consulted nothing but her maritime strength, and in proportion as she has felt its greatness, she has thought herself authorised to engage in every enterprise. So absolute has this power at length appeared to her, that she has believed herself exempted from the observance of the most solemn engagements, and of the most sacred principles of the universal law of nations. History will be consulted in search of facts to support the truth of these assertions, and to enable us to form a closer comparison between the conduct of the two nations, from which the most important conclusions will flow.

2. The ancient Britons, dwelling in caverns, with which the interior of their island abounded, were not in a situation to oppose any resistance to the invasion of the Romans, under the command of Cæsar.(116) According to Pliny, (117) they possessed, at that time,

(116) Jul. Cæsar, de bell. gall. lib. 4, c. 22.

(117) Plin. hist. nat. lib. 4, c. 3. "England," says the Abbe Raynal, "finding herself at the present day, the first maritime power, "readily imagines that she has always possessed the empire of the "sea. At one time, her maritime superiority is traced as far back "as the time of Julius Cæsar; at another, the date of her dominion over the sea is, at least, in the ninth century. At some future "day, perhaps, the Corsicans, who are of no consequence at pre-

Offa, king of Mercia, the first who claimed the empire of the British sea.

only light canoes, made of osier, and lined with leather, similar to those still used by the Greenlanders. The Saxons, the Jutlanders, the Angles, and other northern nations, who successively ravaged their coasts, and who often pursued the natives into their gloomy retreats, did not inspire them with the idea of opposing these attacks, by armed ships. The Angles finally succeeded in establishing themselves permanently in the greater part of the island, and gave their name to the country, which they divided into seven kingdoms.

3. Offa, king of Mercia, the most powerful prince in the heptarchy, distinguished for the wars he carried on against the neighbouring kings, and for his solicitude to maintain a considerable fleet to guard the coast, appears to be the first who had any pretensions to the empire of the sea. He disputed it with Charlemagne; and this great monarch, who had not time to form a marine, seeing the advantages to be derived from the naval forces of Offa, in guarding his dominions against the attacks of the Normans, who, with powerful squadrons, sometimes with fleets of 120 and 200 sail, exercised piracy, and every kind of robbery, on the sea, did not disdain the alliance of the Mercian king. Char-

" sent, when they become a maritime nation, will inscribe in their " records, that they have always possessed the dominion of the " Mediterranean sea. Such is the vanity of man; it seeks to ag- " grandize its nothingness in past, as well as in future times."

Tableau de l'Europe, p. 70.

lemagne was soon in a situation to send succours to Offa, and to make himself feared on the ocean. (118) Like an able politician, he perceived that an empire, whose limits were so extensive, could not be supported without a well organized marine. He built, and carefully maintained vessels to cruise at the mouths of the rivers, along the coasts of France, Germany, and Italy, and to guard all the maritime frontiers of his dominions, from one sea to the other. By the prudence of his measures, he defeated the ambitious schemes of Offa, and beat the Saracens near the islands of Sardinia, Corsica, Majorca, and Minorca. He sent his son Pepin, with a formidable fleet, against the Venetians, who conquered them, and by means of his squadrons, he made the French flag every where respected.

4. One of the successors of Offa, the proud Edgar, who maintained a numerous fleet to guard the coasts, imagined himself the absolute master of the ocean. He assumed the pompous title of Emperor and Lord of all the kings, and master of all the islands of the

(118) The English authors, themselves, are compelled to agree, that Charlemagne had the superiority in the British seas. See *Lediard's History of the English Marine, Vol. I.**

* See Henry's History of Great Britain, Book II. Chap. II.....T.

British seas.(119) Edgar, being one day at Chester, embarked on the river Dee, and his inordinate vanity suggested the idea of compelling eight princes, his tributaries, to row the bark, while he directed the helm ;(120)* a naval triumph without example in the history of Europe. This instance of folly verified the old maxim, that the triumphs of pride are always insulting to humanity.(121) Swaine, king of Denmark, having driven Ethelred II. from the English throne, was proclaimed in 1014, king of the country, where he died in 1015. Canute the Great succeeded his father, and united in his person the crowns of Denmark, Norway and England. His heart was not inflated with those vain and ridiculous pretensions to the empire of the sea, so much cherished by the kings of England. Uninfluenced by that insulting pride, so natural to them, he observed an opposite conduct. His courtiers, accustomed to flatter their sovereigns on the maritime empire which they were disposed to assume, attempted one day to persuade Canute that his dominion over the sea was unbounded. This prince, without appearing to be displeased at this flattering falsehood, invited them to a fishing

(119) *Alti tonantis Dei largiflua clementia, qui est lex regum, Ego Edgardus, Anglorum Basileus, omniumque regum, insularum, occanique Britanniani circumjacentis, cunctarum nationum quæ infra eum includuntur, dominus, &c. Chart. eccl. Wigorn. ad an.* 964. Selden, *Mare Clausum, p.* 137.

(120) *Chronic. Saxon, p.* 137. * Hume, *vol.* 1, *p.* 118.

(121) M. de Sainte Croix, *de la puissance navale de l'Angleterre.*

party; after which, he directed a sumptuous repast to be prepared on the borders of the sea, and to be served up at the tide of flood. The guests soon perceiving the waves to approach them, left their places; the king remained alone, and commanded the sea to retire. The waves still continuing to rise, he pretended to be in a rage, and exclaimed, "Waves of the ocean, "is it thus that you respect your master?" Then turning to the courtiers, he added, with a smile of contempt, "He alone who holds in his hands the ut- "most limits of the world, has a right to command "the elements, and to prescribe bounds to the "ocean."(122)

6. William I. duke of Normandy, surnamed the Bastard, on account of his birth, and the Conqueror, for having subdued England, made himself master of that country in 1066, after the defeat and death of Harold, the last of the Saxon kings. To this prince England owes her grandeur and power. The English, before barbarians,(123) were softened by the manners of the French, whom they now detest; though to them they are indebted for their glory and

(122) *Unde rex resiliens neminem regi nomine dignum esse pronunciavit, præter eum Unicum, cujus nutum tam mare quam terra observaret. Florileg. ad an.* 1035. Selden, *Mare Clausum, lib.* 2, *cap.* 12.*

(123) The English, at this period, were not unlike those describ-

* See also Hume's History of England, vol. 1, p. 152.....T.

prosperity. William could not have gained possession of his new kingdom, without the assistance of Philip I. king of France, and Baldwin, count of Flanders, to whom he was bound by the ties of eternal gratitude. But this fortunate and powerful vassal, as it too often happens, soon forgot his benefactors. He blushed to owe his crown to them, and he transmitted to his successors those seeds of aversion and hatred, which have since continued to shoot and expand.(124.)

7. The successors of William neglected the marine so much, that when Richard I. for his courage surnamed *Cœur de Lion*, undertook his crusade to

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ed by Horace. The Roman poet, after invoking the muse Calliope, thus expresses himself:

Utrumque mecum vos eritis, libens
Insanientem navita Bosphorum
Tentabo, et arentes arenas
Littoris Asyrii Viator:
Visam Britannos, hospitibus feros.

Lib. 3, Ode 4.

(124) Froissart remarks, that in his time, (1337—1410) the English felt such extravagant animosity against France, that many gentlemen covered one eye with a piece of black cloth, in consequence of a vow they had made never to see with that eye, until they had signalized themselves by some memorable exploit against France. This is another trait of the ferocity remarked by Horace in the preceding note.*

.....

Yet this was near 300 years after the Norman conquest.....T.

Palestine, he was obliged to have recourse to foreigners, for ships to transport his followers. John, surnamed *Lack-land*, succeeded his brother Richard, and maintained no larger naval force. Like his brother, he was under the necessity of soliciting the count of Flanders to fight against Philip Augustus, who had collected in the Seine, a fleet of seventeen hundred sail.(125) The counts of Boulogne and Salisbury, who commanded the English naval forces, learning that the French fleet, lying at anchor in the harbour of Dam, and along the coast near the city, were deserted by their soldiers, who had landed for the sake of plunder, attacked and boarded the ships without opposition, cut their cables, brought off three hundred of them laden with provisions, and burnt one hundred more. This victory, due only to the assistance and the boldness of the count of Flanders, the enemy of Philip, rendered John so intoxicated with pride, that he afterwards pretended that his maritime laws were respected by all the world. He had, in consequence, the ridiculous arrogance, to require all foreign vessels, on meeting an English ship, to sa-

(125) If we attend to the weakness of these vessels, we shall not be surprised at the number. The greater part of them were merely *coasting craft*, that is, large boats, or barks with three masts. The others were gallies, a kind of vessels of war with sails and oars, having the prow armed with a beak head, or brass trident extending almost to the water line.* *Ducange, Voc. Galea.*

* See Henry's History of Great Britain, Book III. Chap. 1, & 6.....T.

lute the flag, and ordered his officers to compel them to pay this homage to his power, and to chastise their captains in case of refusal.(126)

8. Edward the first, though engaged in a war with Scotland and Wales, did not relax his efforts to extend his authority over the seas surrounding Great-Britain. He prohibited the Flemish and Dutch from fishing in them without his express permission, and published an ordinance, enjoining his officers, vigilantly to maintain the sovereignty possessed by his ancestors, over the British ocean.(127)

9. Lediard, who wrote by order of the government, his history of the English marine, and is strong-

(126) The words of this ordinance of king John are, "Encontre "sur la mier aucuns nefs ou vaisseaux chargés ou voiles, qui veuillent "avaler et abaisser leur triefs au commandement du lieutenant du "roi, ou de l'admiral du roi, ou de son lieutenant; mais combattant "encontre ceulx de la flotte, que s'ils puent estre pris, qu'ils soient "reputes comme enemies, et leurs nefs, vaisseaux et bien pris et "forfaits, comme biens des enemis, tant soit que les maitres et pos-"sesseurs d'iceulx voudraient vener apres et alleguer meme les nefs, "vaisseaux, et biens, estre biens d'amies du roi nostre seigneur, et "que la manie estant en iceulx, soient chasties par emprisonne-"ment de leur corps, par leur rebellité, pour discretion." *Selden Mare Clausum, lib.* 2.

(127) The words of this ordinance are, "especiellement de re-"tenir et maintenir la souveraigneté que nos ancetres, royes "d'Engleterre soloyent avoir en la dite mier d'Engleterre quant "a l'amendment, declaration, et interpretation des loix par eux "faites a gouverner toutes maners de gentz passantz par la dite "mier." *Selden, loc. cit.*

ly attached to the system of the maritime sovereignty of the English, supports, by a very curious train of reasoning, the extension of this empire over the waters which wash the coasts of France. "During two "hundred and fifty years," says he, "that the Nor- "mans were masters of both sides of the channel, "no person had a right in any part of the British seas; "the sovereignty belonged exclusively to them. But "in what quality do they hold this right, if it is not "in that of kings of England? By what title, if it is "not that of its being an inseparable *apanage* of their "crown." Thus, because the French conquered England, England became, at once, mistress of her own coasts, and those of Normandy: but when England lost that province, when she renounced it forever, by the treaty of Abbeville, confirmed by many others, she still remained, according to Lediard, the sovereign of the sea which bathes the Norman coast! The same author defies France to prove that she ever had the right to nominate an admiral in those seas, in which the English assert that France can have only a commodore.(128)

10. Philipe-le-Bel, having nominated Regnier Grimaldi, a Genoese, admiral of the channel, Edward considered himself insulted, and demanded satisfaction, which he did not obtain. The English pretend, that the arbiters chosen by each party to decide

(128) See an excellent work, on this subject, of M. Viennot de Vaublanc, entitled, *Rivalité de la France et d'Angleterre.*

this difference, determined in favour of the English monarch, and declared that his predecessors, had been always sovereigns of the sea, in which the kings of France had no right to have an admiral, but merely a commodore. If this pretended award, in favour of the maritime sovereignty of England, did take place, it ought to have been preserved with as much care by the English as their Magna Charta; yet it is no longer to be found, in the records of the tower of London, where Bouroughs, Coxe, Selden, and others pretend to have seen it.(129)* Sir Walter

(129) M. Sainte-Croix, in the work before cited, asserts, that M. de Brequigny, could not discover this piece, after a most diligent and close search made by him in the tower of London, by order of the king of France. Long before him, the laborious Rymer appears not to have been more fortunate, or has rejected the paper as spurious.

* Selden founds his assertion on a record to be found in the tower of London, part of which Coke has transcribed, in his Institutes, part 4, ch. 22. It is entitled, *De superioritate maris Angliæ et jure officii admiralitatis in eodem.* It seems, that certain commissioners, or auditors, were appointed by Edward I. and Philip *le bel,* to decide some maritime disputes which had arisen between the two nations, and that procurators from the principal maritime states of Europe attended before those commissioners; that is, from *Genoa, Catalonia, Spain, Germany, Friseland, Denmark,* and *Norway,* and other places. The *libel* presented by these procurators to the commissioners, is given by Coke as extracted from the record of their proceedings, written in Norman French; it recites, "that whereas, the kings of England, by right of their said kingdom, have, from time out of mind, been in peaceable possession of the sovereign lordship of the English seas, and of the islands within the same," &c. &c. It is probable, that the award of the commissioners is

Raleigh himself, though strongly attached to the glory of his country, acknowledges, that he did not understand that the English maritime dominion became absolute before the reign of Henry VIII.(130) Besides, it appears that this dispute was not terminated by that award, so much vaunted by the English authors; but that the two kings, irritated against each other, commenced an open war. An English fleet insulted Rochelle, and carried off a large booty. Philip *le bel*, sent a considerable naval force against England, under the command of Matthew de Montmorency, who landed near Dover, seized upon the place, and burnt a part of the town. This enterprise led to an accommodation between the two princes.

11. Mary, queen of England, having married, in 1554, Philip II. king of Spain, imagined, that she could gain the unfeeling heart of her ambitious spouse, by seconding his designs against his adversary, Henry II. king of France, who had just lost the battle of St. Quintin. She, therefore, endeavoured to prevent the success of the French cruisers, who had made a great

contained in this record, or at least, from so much of it as appears, that it was in favour of England. The record in Coke, is doubtless the one referred to by Selden, and must have been seen by him.....T.

(130) This assertion of Sir Walter Raleigh is not the less gratuitous. The English were often, at that time, beaten by the French. Henry VIII. in 1536, was obliged to sue for peace with Francis I. It was granted on condition of restoring Boulogne to France.

The English claim the channel.—Elizabeth's answer to the Spanish envoy.

number of prizes in the channel. Through her chancellor, she complained of this conduct. This minister, in his note, says, that he is surprised that the French should undertake to capture foreign vessels in the channel, the protection of which belonged to the queen, his mistress. Antoine de Noailles, the French ambassador, answered, that, without investigating the rights of the English, he might also complain that they had so badly discharged their duty in protecting this passage, that many French merchantships had been captured by the Spanish; that, after all, the sea was free and common, and that power alone conferred the sovereignty of it.(131)

12. Queen Elizabeth, whose discourses were always made with much consideration, replied to the envoy of Spain, Don Mendoza, who complained that the English were allowed to navigate the Indian ocean, that she saw not why the English, or any other nation should be interdicted the navigation of those seas; that, in this respect, she knew of no prerogatives possessed by the Spaniards, much less that of prescribing laws to those who were not bound to obey them; that the use of the ocean on which the English sailed, was as common to them, and to all mankind, as the air, and that by their nature, these elements could not be subjected to the power, or become the property of any person what-

(131) See *Ambassade et negotiation de Noailles, tom.* 1, *p.* 291. *Depeche d'Antoine de Noailles,* du 27 Août, 1555.

ever.(132) This principle, no less founded in reason, than permanent and universal, was soon forgotten by the successors of that illustrious princess. Besides, Elizabeth having laid the first and true foundation of the maritime empire of her nation, had not time before her death, to secure it by a solid and advantageous treaty of peace. After her decease, the sceptre of the seas passed to the hands of the Dutch. The possession of it was afterwards insured to them by the brilliant victory of Van Tromp, over the grand fleet of Spain, to which Philip II. before the engagement, had given the name of invincible.

13. In 1616, James I. king of England, being in want of money, the Dutch took advantage of his necessities, and managed the monarch with so much address, that the next year he resolved to restore to them, the towns of Flushing and Brille, and the fort of Ramenkens, by the possession of which, the English had kept them in a state of dependence.(133) The regret which this prince felt, after surrendering these cautionary towns to the Dutch, not only irritated him against Barnevelt, the author of the negotiation, but rendered him still more ill-disposed towards the republic. He sought occasion to intercept their herring fishery on the coast of Scotland; and upon the

(132) Camden's Life of Elizabeth, 1580.

(133) See Letters and Negotiations of Dudley Carlton, vol p. 57, &c. Burnet's Memoirs, vol. 1, p. 23, 24.

James captures the Dutch fishermen: his reply to their complaints.

reiterated complaints of the Dutch, his minister wrote to the English ambassador at the Hague, the 1st of January, 1617, to the following effect:

"That his Britannic majesty wished the States "General to be informed, that the king of Spain had "requested leave of him to fish in the British seas, "and that the king of France had desired that this li- "berty might be granted to him, for the supply of his "own household. His majesty further declared, that "he understood the laws and rights of his kingdom, "and that it was not from them, nor from their Gro- "tius, that he should learn the principles of the law "of nations; in short, he threatens them, that if they "do not acknowledge the legality of his claims, as "all the other nations of Christendom have done, it "may happen, that by their obstinacy, and their "*mare liberum*, they would soon be reduced to want "*terram*, and *solum*, and *rempublicam liberam*." Notwithstanding the violence of this extravagant letter, James, whom Henry IV. called *Capitaine èsarts, et clerc aux arms*, was satisfied with a verbal acknowledgment, and by his lawyer, *Selden*, caused an answer, entitled *Mare Clausum*, to be given to the treatise of *Grotius*, under the title of *Mare Liberum*. During the reign of this monarch, every controversy, though commenced with bitterness, and with much scholastic disputation, ended in a peaceful manner.

14. This prince, who never let slip an occasion to exhibit his claims to the empire of the sea, took ad-

Treatment of Sully, the French ambassador.

vantage of a remarkable circumstance to assert them against France. It was that of the embassy of Sully, sent by Henry IV. to England, to felicitate James on his accession to the throne, and to renew the ancient treaties. Cardinal Richelieu, who knew the resources of his country, and was desirous of making Lewis XIII. sensible, how necessary it was for France to maintain a respectable marine, relates the following fact: "The duke de Sully, appointed by "Henry IV. ambassador extraordinary to England, "having embarked at Calais in a French ship, bear- "ing the French flag on her mainmast, was no soon- "er in the channel, than meeting the English vessel "which was to receive him, the commander order- "ed the French vessel to lower her colours. The "duke, believing that his official character would "protect him from such an affront, resolutely refused "compliance; but this refusal was followed by three "cannon-shot, which, entering the ship, pierced the "heart of every good Frenchman. Force compelled "him to do what reason forbade, and to the com- "plaints he made, the only answer he could obtain "from the English captain was, *that as his duty obli-* "*ged him to respect the rank of the ambassador, the* "*latter was also bound to render to the flag of his mas-* "*ter, the honours due to the sovereign of the sea.*"(134) Henry IV. dissembled his resentment, but with a firm resolution to maintain the rights of his crown, when time should have enabled him to acquire a suf-

(134) *Testament politique du Card. Richelieu*, ch. 1, § 3.

Cromwell asserts the sovereignty of the sea, against the Dutch.

ficient maritime force. Unhappily, that great king was assassinated at the very period when he had conceived, and was preparing to execute, the project of creating a national marine.

15. Cromwell, after seizing on the throne, from which he had precipitated his sovereign, and brought him ignominiously to the scaffold, was not slow to resume the old pretensions of his country, to the empire of the sea. England, says he, having acquired this empire, from all other nations, by the point of the sword, cannot allow any flag but its own, to appear on the ocean. He wrote to Blake, the commander of a squadron, destined against the Dutch, this very singular letter: "It would be to your honour, sir, "and that of the brave captains under you, to send "all these frogs [the Dutch] back again to their "marshes, and not to suffer them any longer to dis-"turb us with their croaking."(135)

16. The medal, struck at London, after the victory gained over the Dutch, by the English fleet, under the command of the Duke of York, on the 13th of June, 1665, sufficiently displays the national spirit with which Cromwell had inspired the English, and the unalterable pretensions of this ambitious and proud nation. On the medal is represented the Genius of Great-Britain, with this legend: *Quatuor maria vindico.* Charles II. in his manifesto against Holland, published in 1672, says, "that it was an un-

* Raguenet's Life of Cromwell.

Charles II. and William III. assert the claim to the sovereignty of the sea.

" heard of violence for them to pretend to dispute " the empire of the sea with the English, or to re- " fuse the honours due to their flag." He added, " that this empire was one of the first prerogatives " of his predecessors, and the last which his king- " dom would relinquish."* He was represented on a medal, seated in a triumphal car, drawn by four sea-horses, with this motto, *Et pontus serviet.*

17. William, prince of Orange, the usurper of the English throne, on declaring war against France, the 27th May, 1689, published a manifesto so insolent and abusive as to shock even the powers most jealous of the grandeur and prosperity of Louis XIV. His claim to the empire of the sea was supported by the most odious reproaches and outrageous insults. He gave to Louis no other title than king of the

* Bynkershoek observes, that by the salutation of the British flag, nothing more was intended, than the acknowledgment of that precedence due, by the etiquette of nations, from republics to crowned heads, and their representatives: and he cites, by way of example, the treaties of peace between England and the States General, made in 1654, 1662, 1667, and 1674, in which the latter stipulate to pay the honours of the flag to the ships of the former in the northern seas, and as far as *Cape Finisterre. Quin si nec essent, ita nihilominus moribus gentium obtinent, ut respublicæ regnis assurgant, et qui invicem representant, eodem jure, utantur.....Anglorum majestate terra marique comiter observamus, sed negamus ex eo, quod mari observaremus, adversus nos recte illius imperium jactare, et vel generaliter de dominio Britannici recte sibi blandiri, et præterea magis negamus, quod tertio quoque verbo inculcat Seldenus, imperium insulæ comitari perpetuo comitatum fuisse imperium maris.* Bynk. *de dominio maris,* cap. 5, *ad finem*.....T.

French, called him the general enemy of the Christian world, and in assigning the concluding motive to war, he did not hesitate to make use of the following terms: "That the rights of the flag which belonged to the "crown of England, had been disputed by his "[Louis XIV.] order, a measure tending to the vio- "lation of our sovereignty of the sea, which has been, "at all times, maintained by our predecessors, and "which we are resolved to support, for the honour "of our crown and of the English nation." William showed himself inflexible in the arrogant claims he had determined to maintain. On account of a victory gained by the combined fleets of England and Holland, consisting of eighty-nine sail of the line, and twenty-three frigates, under the command of Lord Russel, off La Hogue, the 19th May, 1692, over the French fleet of 44 ships,(135) commanded

(136) In this famous battle, the courage of the French was the admiration of their enemies. Not one of their vessels struck its flag. Twelve ships, obliged to retire into La Hogue, a port without any means of defence, were burnt. Russel had the greatness of mind to write to Tourville in these words: "I congratulate you, "sir, on the extraordinary valour which you have displayed in at- "tacking me with so much intrepidity, and in fighting with such "inequality of forces." Shovel and Delaval, English admirals, and Allemonde and Callemberg, the Dutch commanders, merit applause for the praises bestowed on their adversaries; a justice which enlightened self-love easily confers, but which a mean and jealous policy often withholds. The English ministry, in publishing the accounts given by their admirals, suppressed every thing which was honourable to the French admiral, who was destined to appear again on the scene, and whose reputation they feared. *Histoire de la puissance navale d'Angleterre, tom. 2.*

Seamen are naturally imperious.—Naval victory of the French.

by the famous Tourville, he caused a medal to be struck, representing himself under the figure of Neptune, with the following verses, which Virgil puts in the mouth of this God, when addressing the winds:

Maturate fugam, regique dicite vestro,
*Non illi imperium Pelagi.**

"The natural tone," says Dalrymple, an English historian, "of all maritime powers, because they can "insult every where with impunity."(137) Men who habitually follow the sea, are naturally haughty and imperious; ambition converts this haughtiness into despotism; and the natural effect of an insular position, is to lead to tyranny on the ocean.(138)

18. The brilliant victory gained by the French fleet, under the command of Marshal Tourville, off *Beachy Head*, the 10th July, 1690, over the combined English and Dutch fleet, commanded by Herbert, (Lord Torrington) and superior in the number of ships and weight of metal, gave to France the maritime ascendancy.(139) Louis XIV. commemorated this victory with great moderation, by a medal struck at Paris, with this legend: *Imperium maris assertum.*

* Virgil's *Æneid*, lib. 1, l. 136.

(137) Dalrymple's Memoirs of Great Britain, vol. 1, p. 41.

(138) Barrere, *de la Liberté des Mers, tom.* 1, *p.* 3.

(139) Herbert was so roughly handled in this action, that he was obliged to put out his boats, and tow off his ships during the night. Had it not been for this circumstance, Tourville would have en-

French victorious over the combined fleet under Admiral Rook.

He caused another medal to be struck, on which were seen broken ships, masts, and flags heaped among the arms of England and Holland; upon the summit of this naval trophy, victory holds in one hand a crown of laurel, and in the other a palm. The words of the legend are, *mersa, et fugata Anglorum et Batavorum classe;* and those of the exergue, *ad oras Angliæ*, x. Julii, MDCXC. The count of Thoulouse, commander of the combined fleet of France and Spain, directed by M. d'Estrees, chased from their coasts on the Mediterranean, the English and Dutch fleets, under the command of Admiral Rook.(140) The memory of this event was preserved by a medal, which represents Spain sitting on a

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tirely destroyed the English fleet. As the Dutch were most exposed to the French fire, there was not one of their ships but what was crippled or dismasted. The enemy lost fifteen large ships, and five fire-ships. Two-thirds of their crews were killed, wounded, or made prisoners. The French fleet did not lose a boat. It had 400 killed and 500 wounded.*

(140) The English, though superior in force by six sail of the line, quitted the field of battle. The French lost but one ship, and the Dutch vice admiral's was blown up.†

* The French fleet consisted of seventy-eight large ships, besides fire-ships and frigates. The combined fleet consisted of twenty-two Dutch and thirty-four English ships. *Dalrymple's Memoirs*, vol. 3, p. 18. *Smollet's Continuation* of Hume, vol. 1, p. 96. The English historian states the loss of the English to be only two ships, and 400 men.....T.

† The English and Dutch fleet consisted of 23 sail. A large French fleet of eighty sail, was lying in Logos Bay, though only eighteen ships were dispatched to attack the English. Three Dutch ships sustained the whole fight of eighteen French, and gave the English an opportunity to escape. See *Dalrymple's Memoirs*, part 3, p. 47. *Smollet*, vol. 1, p. 205.....T.

Arrogance of the English: Means by which they acquire their superiority.

half column; victory appears above in the air, holding a palm in her hand. The legend is, *Oræ Hispaniæ securitas;* the exergue, *Anglorum Batavorum classe fugata ad Malacam*, 24 *Aug.* 1704.

19. It is not by medals only, that the English government has shewn its insulting arrogance. The example of moderation in France has never been able to raise a blush in England at the maxims she has adopted. She has boldly proclaimed her pretended maritime empire in the face of the world.(141) England has always felicitated herself on her superiority at sea; but how shamefully has this superiority been acquired; by the violation of the sacred principles of the law of nations, by which alone she has attained that ascendancy; by ruining the commerce of every nation, and by keeping so many French seamen to perish in her prisons.(142) If the British government wishes to dis-

(141) In an order, relative to the English marine, of the 1st of January, 1734, we find the following article: "Foreign vessels, "meeting any ship of his majesty, in the British seas, as far as "Cape Finisterre, and refusing to lower their flag, ought to be "compelled to do so, and those who shall neglect to compel them, "will be informed against. Ships of his Britannic majesty are not "to lower the flag in the British seas, nor in foreign seas."

(142) In the 10th article of the answer to the *ultimatum* of France, who, in the negociation at Augsburg, in 1763, insisted, at first, on the restitution of the vessels taken before the declaration of war, the British minister had the assurance to advance, that "this "demand was neither just, nor to be supported according to the "incontestible principles of the laws of war and of nations." What an answer! Such impudence will always impose silence on probity and moderation.

Unjust conduct of England in making captures before it declares war.

turb the peace of the world, if it desires to attack France, it calculates chances, it watches the moment when perfect security induces the citizens of other countries to engage in commercial speculations, and to exert their maritime industry, it then commences war; hostilities precede any declaration, the seamen, the wealth of the nations it summons to the combat, become its prey, and are declared its property.(143) Surely, the usage among other nations was sufficiently established, to prevent acts so contrary to the common rules of equity; but, unfortunately for British honour, it must be remarked, that provision had been

(143) History affords many examples of this conduct. It will be sufficient to cite a few, the most known. The attack of the Dutch Smyrna fleet, in 1672, and of the Spanish fleet, on the coast of Sicily in 1718. These two acts of hostility were not preceded by any declaration of war; nor was the capture of the two French frigates, *Le Lys* and *L'Alcide*, or that of two hundred French merchantmen at the beginning of the war before last. In 1755, without any previous declaration of war, the English attacked and took, off Cape Race, in the island of Newfoundland, ten French ships; their cruisers, afterwards, fell upon the merchant-ships, captured three hundred of them, and made eight thousand seamen prisoners.* In the present war, before the return of Lord Whitworth to London, many French ships were taken and carried into the British ports: Vessels of war were, in like manner, attacked on the coasts of Europe, and in the latitudes of America and Asia.

* See *Smollet's* continuation of *Hume's* History of England, vol. 3, p. 437, 440, 442. "The British ministry, in their conferences with count Mi-"repoix, made no secret that their admirals, particularly Boscawen, had "orders to attack the French ships wherever they should meet them."....T.

Conduct of France ; its naval superiority in the reign of Louis XIV.

made by treaty, for this very case. By the treaties of Utrecht and Aix la Chapelle, it was agreed that the two nations, in case of war, should mutually grant safe-conduct to such of their subjects respectively, as had vessels in the ports of the other, because, says the 20th article, *not having any knowledge of the rupture that takes place, they navigate in the confidence of peace, and on the faith of treaties.* From a single trait, we may discern the difference between the conduct of the two nations. At the very time that England every where captured the French vessels, France restored, with religious faith, all the English vessels found in her ports, at the time of the rupture, or which had been taken at sea, before a knowledge of the declaration of war. The cabinet of St. James accepted the restitution ; but made none on its part, satisfied with admiring the good faith of France.

20. The long and brilliant reign of Louis XIV. afforded the French marine every occasion that could be wished, to distinguish itself, and to obtain a decided preponderance at sea. It is well known what part this marine had, and which it must have naturally had, in the series of important and glorious successes that attended this great king. Notwithstanding his maritime superiority, it does not appear that this prince ever arrogated to himself the empire of the sea. If any thing could be suffered to destroy the principle of natural independence, and general liberty on the sea, a principle, the violation of which ought to rouse every man of feeling, in the cause of

France has the best claim to the empire of the sea.

humanity, and the interests of his country; if any nation might be allowed to assume this distinguished rank, and to rule over the waves, what power has so fair a claim to be called to this high destiny, as France?* France, situated on two seas, is, by its singular position, essentially, a maritime, commer-

* When we consider the great and decided superiority of France on the continent, her fortunate position, and internal resources, we cannot believe that the other continental powers would willingly see her in possession of an equal preponderancy on the ocean. If France should obtain a maritime ascendancy, what security would the nations of Europe have against the abuse of such exorbitant power, or that its government would not, like that of Rome, after the destruction of Carthage, attempt the subjugation of the rest of the world? The same danger is not to be apprehended from Great Britain. Her power at sea is great; on the land it is nothing. Her insular situation, and the habits of the people, render it impossible for her to succeed in any plan of aggrandisement on the continent, opposed as she always must be, by superior military force. What has France, Germany, Austria, Spain, Prussia, or what have the powers of the North to dread from the armies of Great Britain? On the other hand, what would not Great Britain have to fear, if her naval power should be annihilated, or transferred to France? She wisely and justly considers that her prosperity, and even her existence as a nation, depends on the superiority of her military marine. Her determination, therefore, to maintain this bulwark of her safety, appears, to an impartial observer, more praiseworthy than blameable. She has, however, to guard against the abuse of her maritime power; lest, blinded by self-interest, she adopt measures which may provoke a combination that will endanger the existence of what she is so anxious to preserve. It is the wise policy of the United States, to maintain a neutrality in the wars of Europe; and it is their interest that an equilibrium should be preserved between England and France.....T.

The courage, activity, &c. of France, entitle it to a superiority at sea.

cial, and military power. She seems thus placed by nature, that she may give her hand to all the commercial nations of the world. Frenchmen, in spite of a superiority in the number of their enemies, have never refused to fight; nor has England ever triumphed over them, when the forces of the two nations were equal. The French marine has uniformly combated, without calculating any other chances, but those of courage: France has constantly taken up the glove when thrown by the English.(144) Might it not then have assumed that rank upon the ocean, to which by its activity, its industry, and its courage, it has long since been entitled? This has not been done.(145)

(144) Before the two last reigns, the ridiculous preservation of the title of king of France, afforded the king of England, every year, an opportunity of displaying his folly. On the first day of the year, a herald at arms, in the church of St. Paul, in presence of the court and of the foreign ministers, proclaimed all the titles of the king; and when he came to that of *king of France*, he threw down a glove, which the French ambassador never failed to take up.

(145) All the cabinets of Europe, since the peace of Utrecht, have erred in not perceiving the changes which were made in the relative interests of the principal European powers. Mably, in his *Droit Publique de l'Europe*, has seen this truth, and has expressed it in the following terms: "The court of France, seeing, at the treaty of Utrecht, "that England assumed that rank among the powers of Europe which "Austria had held, ought immediately to have taken measures for "the re-establishment of her marine, and to have gradually directed "her principal forces to the sea coast. Whenever a maritime pow-"er, engaged in commerce, and wishing to aggrandize itself in "America, is placed at the head of affairs, seamen and ships be-

Conduct of the English in their sea-fights with the French.

21. The English marine has not been conducted on similar principles. Its practice in time of war, is governed by two fundamental maxims; never to attack, unless stronger than the enemy, both in the number and size of its ships; to abandon the field of battle when it is not certain of success. If, at the approach of night, the fortune of war is not on the side of the English, they are sure not to be found the next day. This circumspection was exhibited even by the daring Rodney, who fled three times before the skilful de Guichen; by admiral Keppel, who precipatately retired into port, as soon as he perceived the French squadron, in the road of Brest, to be stronger than his own. The same admiral followed this maxim, in the night following the action, off Ushant, and retired, while d'Orvilliers remained on the field of battle, and reserved his fire during the night.* The same conduct was observed by Byron towards de Estaing, and by admiral Hood. In the great naval actions, in the East-Indies, Hughes, notwithstanding his valour, did not persist in disputing

" come more necessary than land forces. By this conduct, France " would have been better prepared, and would have rendered ne- " gotiations more easy and successful. By restraining the mari- " time power of the English, she would have diminished the influ- " ence which they have acquired in the affairs of the continent. " The court of London, less confident and daring, would have con- " ducted with less haughtiness, and more good faith."

* A very different, and almost opposite, account of this action is given by the English historians. See *Beatson's Naval and Military Memoirs, vol. 4. Annual Register for* 1779.....T.

the victory with M. Suffrein, but retired four times, because he saw success as often, ready to crown the efforts of his rival.* An English frigate has never singly attacked a ship of the line. The English are never seen, but the French too often, perhaps, fighting, at the same time, against numbers, fortune and force. The time is not far distant, when French seamen (who never animate themselves with strong liquors) will join skill to valour ; when the marine of France, reviving under the influence of the hero who now governs the state, will rival, by its exploits and successes, the army of the line.(146)

22. During the war of 1757, the French demanded peace. Lord Chatham, blind† as he was, had himself carried to the House of Lords ; (he was the Tiresias of the government) "No peace," said he, "unless France signs the destruction of her marine; "it is enough, if she is allowed the coasting trade; "England should reserve to itself the exclusive "sovereignty of the ocean." The same spirit directed the hand of that minister, when, on the 18th of September, in the same year, he wrote the follow-

* In *Beatson's* Naval and Military Memoirs, vol. 4, p. 430, vol 5, p. 58—64, p. 569—614, there is a particular account of these actions, and, as might be expected, materially different from that of the French historians.....T.

(146) See an interesting work by M. Viennot Vaublanc, entitled *Rivalité de la France et de l'Angleterre*, from which I have taken the above facts.

† Our author has mistaken the infirmity of Lord Chatham: he was often lame with the gout, but never blind.....T.

ing dispatch to Admiral Hawke: "I am now to sig- "nify to you the king's pleasure, that you do not "consider the above mentioned time limited for "your return, as intended in any manner, to affect "or interfere with the full execution of the first and "principal object of the expedition; namely, at- "tempting, as far as shall be found practicable, a "descent on the French coast, at or near Rochfort, "in order to attack, if practicable, and by a vigo- "rous impression, force that place, and to burn and "destroy, to the utmost of your power, all shipping, "docks, magazines, and arsenals, that shall be "found there, and exert such further efforts as shall "be judged most proper for annoying the enemy."*

23. At the close of the 18th century, the British cabinet published in the face of Europe, and the French republic, a letter from Lord Grenville to Lord Malmsbury, which contains the following characteristic expressions: "It is his majesty's decided "and unalterable resolution on this point, not to ad- "mit of any proposal for treating with his enemies, "on the subject of the rights or claims of neutral "powers."(147) Not long after, a member of the English parliament, at the beginning of a speech, delivered in an assembly which represents the body of the nation, made use of these words, the dictates of phrensy or insanity: "They (the French) ought not to fire a

* See the original letter in the 3d volume, page 13, of a work entitled, "Anecdotes of the Life of the Earl of Chatham".....T.

(147) See *Negotiations at Lisle*, 1797; Letters of Lord Grenville.

" single cannon on the sea, in any part of the " world, without the permission of Great Britain;" an expression similar to that uttered by Lord Chatham, at a moment when he was attacked by the same malady. It is not a year since, that in the House of Lords, the 23d of May, 1803, one of the sons of the king of England, the Duke of Clarence, did not scruple expressly to declare, that the destruction of St. Domingo was the work of England; and he proudly claimed the glory of it, for his country. So much did he disregard that public decency, observed by men entrusted with the government of nations, that he seemed to fear, lest it should be doubted for a moment, that the insurrection of the blacks was owing to the magnanimous efforts of the British cabinet. Proud, without doubt, and self-satisfied with this exordium, he proceeded to observe, with the dignity suited to a prince of the blood; " I " maintain that England has not broken the treaty of " Amiens, since the face of things has changed, and " the independence of Malta is more than ever ne- " cessary. It will be, in our hands, the pledge of " the security and liberty of Europe. The loss of St. " Domingo has been attributed to the first consul; " I think differently, and that it is due to the efforts " of Great Britain. In consequence of his majesty's " message of the 9th of March, it may be said to the " French government, you shall not have St. Do- " mingo, you shall not have Louisiana; to the Span- " iards, you shall not have the Floridas; and to Ba- " tavia, the ally of the first consul, you shall not have

Haughty and imperious conduct of Great Britain towards other nations.

" the Cape of Good Hope ; you shall have nothing " but what Great Britain pleases to give you."* The Romans, in the full possession of the empire of the world, would not, in their senate, have hazarded language so audacious.

24. The maritime despotism of England, during the French revolution, has been, by turns, haughty and insufferable. It devised the plan of starving France, in order to frighten Denmark and Sweden from an armed neutrality ; it has induced Russia to murmur against those principles of the freedom of the seas, which she solemnly recognised in the American war of independence. Great Britain supposed, that by these means, she could overturn the system of free commerce in favour of neutrals ; but her menaces have been despised and disregarded by nations, jealous of their rights. England, enraged, carried fire and sword before Copenhagen. This odious attack has left a deep impression on the minds of maritime powers, while her conduct, during the coalition against France, has discredited British influence on the continent. If bounds are not set to the extravagant pretensions of the cabinet of St. James ; if Europe sleeps and does not dream of repressing

* His Highness added, " But, my Lords, I will declare to " you, notwithstanding my wish to see my country ascend in " the scale of Europe, I would not wish to see France put down. " I do think, for the sake of preserving a balance, and securing this " liberty, there should be a species of rivalry."....T.

Contrast between England and France in relation to the seizure of seamen.

her pride, we shall, soon, see her, like the Carthaginians, declaring to all other nations, *that she will not suffer any of them to wash their hands in the waters of the ocean.*

25. While England, tenacious of a policy, as dangerous as it is alarming, to all maritime powers, executed, with more rigour than ever, during the American war, the plan of seizing the French seamen; the government of France had ordered the fishing boats of its enemies to be spared, and for a long time, endeavoured to obtain the same humanity from the English. These efforts were ineffectual; they persisted in the practice of taking fishermen for the purpose of compelling the seamen to serve on board of their own ships.(148) During the same war, a French cruiser landed on the isle of Sark, in the channel, and carried off six of the inhabitants, who were labourers, and brought them to Cherbourg. This conduct was censured, and the six men were sent back to their own country, by a flag of truce.

(148) In 1778, the *Thomas Koulikan*, a French vessel bound for St. Domingo, was taken in the bay of Gascoigne, by the *Hector*. Forty of the captive seamen, were compelled to serve on board of the English vessel. The *Thomas* was carried into Portsmouth, where her captain and crew were thrown into prison, the seamen induced by threats and promises, to make false declarations, and the vessel cut up, in hopes of finding some written proofs of her supposed destination. On complaint being made by the French ambassador, the answer of the court of London, truly remarkable, declared the right which it claimed, of restraining, at its pleasure, the liberty of the sea.

With such dignity does France reply to those continual violations of the most sacred rights, the number of which, to the disgrace of their nation, the English are every day increasing.

26. France has invariably recognised the perfect neutrality of fisheries; she has constantly adhered to this principle from the reign of Louis XIV. to the present time. It is true, that, by the ordinance of the 1st October, 1692, the English fishermen were driven from the coasts of France; but it granted to those who might then be there, a safe-conduct during eight days, for their return home. This measure, which circumstances justified, was intended merely to guard against spies, who, under pretence of fishing, were employed by an enemy, that was preparing for the bombardment of the maritime places, which was, afterwards, executed, in 1694.

27. The American war, as has been before observed, furnished an occasion to France to manifest, in a more striking manner, her beneficent system. "The "desire which I have always felt," writes Louis XVI. to his High Admiral, the 5th of June, 1778, "to soften the calamities of war, has induced me to "turn my eyes towards that class of my subjects "who are devoted to commerce and fishing, and who "have no other means of subsistence. I trust that "the example which I shall give to my enemies, who "can be governed by no other principles than those

" sentiments of humanity by which I am actuated, " will induce them to grant the same indulgences to " the fisheries that I have consented to allow. I have, " therefore, ordered all commanders of ships, priva- " teers, and cruisers, not to disturb, without new or- " ders, the English fishermen, nor to stop their ves- " sels, not even those laden with fresh fish, though " they may not have been caught by these vessels, " provided always, that they are not armed for of- " fence, and are not convicted of having given sig- " nals that might show a suspicious intelligence car- " ried on with the ships of war belonging to the en- " emy."

28. The French government soon had an opportunity of putting in practice the philanthropic principles contained in this letter. A remarkable example is to be found in the arret of the king's council of the 6th November, 1780. This arret, which renewed the prohibitions contained in the letter of Louis XVI. of the 5th June, was passed in consequence of the opposition made by the Chamber of Commerce of Dunkirk to the decree of the council of Prizes of the 10th May, 1780, declaring valid the ransom of the English fisherman, *the John and Sarah*. The chamber of commerce, in their petition, set forth, that no city in the kingdom was more interested than that of Dunkirk, in maintaining the freedom of fishing; it referred to a letter of the minister of marine, of the 31st May, 1778, containing the opinion of the king on this subject; and the captain of the French

privateer himself, as soon as he was informed that the prize was a fisherman, was eager to give a formal relinquishment of his claims.

29. During the different periods of the revolution, the French government, far from issuing decrees, in opposition to those before given, in regard to the freedom of fisheries, has, on the contrary, uniformly favoured, and extended their principles. In the month of March, 1797, the executive council authorised the municipal officers of Calais, to open a negotiation with the English commandant, stationed at Dunes, for the full liberty of fishing to the distance of three leagues from the coast. In the month of July, in the year 1795, the committee of public safety, sent back, without exchange, all the English fishermen who were in the different ports of the republic, not considering them as prisoners of war. This measure contains an implied expression of that regard which ought every where to be shown to a class of men, whose painful and not very profitable labour, usually carried on by feeble and aged hands, is entirely foreign to the operations of war. Similar considerations dictated the wise decision of the council of Prizes, of the 29th July, in the year 1801, under the presidency of M. Berthier, counsellor of state, pursuant to the opinion of M. Dufaut, commissary of the government.(149)

(149) This excellent adjudication, was to the following effect: "The council admitting the justness of the opinion of the commissary of the government, and adopting the principles of humanity,

Philanthropic plans of the legislators of France.

30. The principles of the revolution inspired the legislators of France with sentiments of moderation and philanthropy. While preparing for war, in order to resist the armies of the coalesced powers, the French republic reflected on the means of preserving nations from its greatest ravages. Its plans were intended to support the operations of industry among all nations, to maintain the benefits of commerce, though surrounded with hostile armies, and in the midst of an almost universal combustion. It wished to behold on the seas, a spectacle like that exhibited in the fine countries, watered by the Indus, and the Ganges, where, at the side of armies combating and destroying each other, is seen the husbandman following his plough, almost on the field of battle.(150)

" and the maxims of the law of nations, which it displays, order " that the fishing smack, *La nuestra Senora de la Piedad y animas,* " carried into Cartaya by the French cruiser *Carmagnole,* together " with the fish laden on board, or the net produce of the sales " which may have been made of the same, be restored to the " master and commander of the fishing smack, or to his authorised " agent, to be disposed of as he may think fit."

(150) See the excellent discourse, delivered by Mr. Garat, in the council of ancients, on the 26th day of December, in the year 1799, on the subject of *maritime captures.* Fishermen, at least, ought to be protected from hostilities. In times of the greatest discord, they were formerly spared, and lived in the midst of public dissensions, as if their respective nations were at peace, " While " Charles VI. made great preparations at L'Ecluse, in order

31. Such maxims have not governed the conduct of the English. Their kings, their ministers, at all times, and even the people, when excited by them, have manifested a blind and implacable animosity against France, which more than once, according to the confession of that candid historian, David Hume, has hurried them into the most dangerous measures The English, every where, disseminating against France, gold and corruption, violating all laws, disregarding usages, the most sacred among polished nations, corrupting the commander and the soldier, encouraging treason, remunerating perfidy, and pensioning crime, have felt the importance of paralyzing the French marine,(151) and of starving every country whose inhabitants were nautical. Despairing of a conquest by arms, they purchased Toulon, that they

" to have good fishing, the English, says Froissart, often went to " fish below Boulogne, and before the port of Visaut.—For fisher- " men (though there may be war between France and England) " never injure one another; they remain friends, and assist each " other, in case of need, and buy and sell their fish, whenever " one has a larger quantity than the other; for if they were to " fight, we should have no fresh fish." Part 3. ch. 41.

(151) This is the policy, with which England always commences war. " The success of the last war," says Mr. Adams, in the house of commons, the 15th March, 1782, " was the " effect of a bold measure, adopted by the former administra- " tion, who, before war was declared against France, seized all " her merchant-ships, and by taking her seamen, rendered it " impossible for her to equip her fleets; a stroke from which that " kingdom did not recover, during the continuance of hostili- " ties."

might deliver it to the flames.(152) They have shaken, in every place, the torch of discord, for the double, but cruel and insane purpose, of prolonging the delusion of rebellion, and of destroying the French mariners, whom they landed on the western coasts

(152) Having been directed to set fire to the unfortunate city of Toulon, Sir Sidney Smith, in a letter, the eternal monument of barbarous perfidy, with a cool indifference, which makes one shudder, relates to Admiral Hood, his preparations, his care, and success in destroying the principal establishments in the place; he expresses, at the same time, his cruel regret, that it was not in his power to exterminate the whole, by flames. In the following year, in the house of commons, Major Maitland accused ministers of having deceived the French, at Toulon, by promising them the constitution of 1789, the enjoyment of which it was not in their power to secure to them; of not saving the wretched and deluded inhabitants of the city, and of abandoning them to the resentment of the victors. "The proclamation of Admiral Hood," says he, "and his manifesto, replete with contradictions, were unworthy snares to entrap the French, and to put them in your power. It is thus, that by inspiring them with that courage, and that determined resolution, the effects of which you have just experienced, you have brought upon Europe and England herself, all the evils of a war, as thoughtless as it is unjust, as unnecessary in its origin, as it is injurious in its consequences." In the sittings of the house of commons, on the 21st January, 1794, Mr. Fox observed, on this subject, "Every thing which has passed at Toulon, is scandalous and disgraceful to our arms and to the English name. I would wish the world not to believe that we took this city and its marine, under our protection, for the disgraceful purpose of seizing the first occasion to destroy them. I wish parliament to be informed by what authority Lord Hood guaranteed to Toulon the constitution of 1789, by virtue of which he has destroyed the ships he received as trustee; and why, if he was authorised to do so, the destruction was not complete."

of France, in order to produce a counter-revolution, thereby to keep alive a fire which might, one day, aid their entrance into the country.(153) In consequence of this system, they have kindled all the horrors of *La Vendee*. On the confines of the Deux-Sevres, on the borders of the Loire, and in the heart of Brittany, they have flattered the passions of the people. In the fertile plains of Normandy, and to the vicinity of Cherbourg, the object of perpetual alarm to English jealousy,(154) they have nourished

(153) When the emigrant officers of the French marine, disembarked by the English at Quiberon, in order to produce a counter-revolution in La Vendee, were driven back by the republican army to the sea-shore, they had no resource but to seek their safety on board of the English squadron, which lay at anchor, within half-cannon shot, Instead of sending boats to receive them, and of protecting them, in their retreat, by their cannon, the squadron fired upon them, and cut them to pieces. More than two hundred of them perished in the sea, and the residue surrendered themselves prisoners. A foreign minister, speaking of this affair, in presence of the English minister, and lamenting the fate of the unfortunate French marines who had perished, the latter replied, " without doubt we commiserate the dead, but on that day, " we obtained a naval victory over France, the consequences of " which will be more important than all the battles gained during " a century."

(154) " Shall I speak of the affair of Quiberon," said Mr. Sheridan, in the house of commons, the 30th October, 1795, " an expedition which no man, who is not dead to feeling, can think of without indignation and horror ; an expedition atrocious and sanguinary, in which English blood has not flowed, but English honour has bled, at every pore ; an abominable expedition, which will cover those who undertook it with eternal infamy and opprobrium."

the hatred of the inhabitants. Such are the ends which the English government keeps constantly in view. We hear, Mr. Dundas, in the English parliament, on the 25th March, 1801, while enumerating the losses of France, formally declare, " that the " first principle of a war, whatever it may be, is the " destruction of the commerce and colonial posses- " sions of the enemy." Lord Loughborough, March 1791, in parliament, exclaimed, " the excessive " ambition and insolence which appeared in the " councils of his majesty, have been carried to such " a pitch in every part of the world, that the ruin of " our empire will be the consequence. Like beasts " of prey, we roam through every region of the " globe in search of victims for destruction. It is with " astonishment and horror, that I see the system " of ministers, to oppress and destroy every other " nation : on one side, vexing, irritating, insulting, " on the other, directly and openly, exerting the

" Quiberon, fatal expedition !" exclaimed Mr. Fox, in the same sittings, " which must wound the soul of every man, and make the heart of every Englishman rise with indignation ! Sad reverse, which has done more injury to our national character, in the eyes of Europe, than any one event of the war ! Heaven is my witness, that I have always contended against this mad project." *

* The above, and several other quotations, from the speeches of the members of the British parliament, to be found in this article, are translated from the French, as the originals were not within reach. It is very probable, that, in the double process they have undergone, the exact words of the original have not been reproduced.....T.

" whole force of the state to crush and exterminate. " Can we expect that enlightened Europe will permit " us to pursue this career, and that the people will " bear the burdens with which they are loaded?" Let the British ministers deeply reflect on what was said by the Marquis of Lansdown, in full parliament, on the 2d November, 1797. " Above all," says he, " let them endeavour to regain for us the " good opinion of Europe. Let them proclaim per- " fect liberty to all neutral nations, otherwise we " shall be compelled to the measure, and then it will " be granted with an ill grace. The present is a fa- " vourable time to conciliate. If we acknowledge " the commercial freedom of the world, we shall be " the first to profit by this magnanimous and gene- " rous system."

32. The constituent assembly of France proposed to the nations of Europe, the abolition of privateering, and the consequent restoration of the liberty of the sea. During the legislative assembly, the same measure was proposed to all the maritime states in which France had any diplomatic agents. Morality so pure, beneficence so decided, alarmed some powers, who, under the influence of the British cabinet, remained silent; a silence that amounted to a refusal of their concurrence. The answer of England was more formal. The ambassador of France, M. Chauvelin, who accompanied this proposition with a note,

worthy of its object, (155) was repulsed, as if the destruction of the English government had been intended. The opening of the Scheld was the real, though not more legitimate, motive for the rupture which followed. The French government did every thing in their power to prevent it. M. Marat, in 1793, had it in charge to attempt a reconciliation. His pacific mission produced no other effect, than to evince the desire of France to preserve peace with a nation that boasts of being free. In refusing to continue at peace, the English minister had to stifle the vehement complaints of Sheridan, Gray and Fox; and to be consistent with his usual policy, he proposed a vexatious bill, to compel all the French settled in England, on the faith of the treaty of commerce of 1786, to depart from the kingdom.

(155) "To give to the navigation, maritime commerce, and "goods of individuals, the same protection and the same liberty, "which the law of nations, and the universal consent of the na- "tions of Europe, give to the intercourse and property of individ- "uals on land; to suppress, in a word, that pernicious custom, "which on occasion of the quarrels of states and princes, interrupts "in every sea, the most necessary intercourse, defeats those specu- "lations, on which the existence of people, strangers to those "contests, often depends; which suspends the progress of human "discoveries, which arms individuals against each other, delivers "the property of the peaceful merchant to pillage, and devotes "to death the navigator who attempts to defend it; such is the "honourable object of the proposition of France to his Britannic "majesty." Thus did the minister Chauvelin, express himself, in a note addressed to Lord Grenville, the 25th July, 1793, on

Liberality of France.—Injustice and tyranny of England.

33. The French republic, strong in the victories that have rendered it illustrious, more just and more moderate than England, caused to be inscribed on the standards of the army of England, these remarkable words: *Liberté des mers, paix au monde, egalité de droits pour toutes les nations.** In this, there appears no national egotism, no commercial ambition, no maritime despotism. Its object was merely to pull down tyranny and pride. The naval despotism of England, on the contrary, has deprived all nations of the possession of that commercial domain, which equal right, and the situation and resources peculiar to each, enabled them to cultivate. The spirit of the court of London, which forms a striking contrast to that of France, has, of late years, shewn itself in betraying its allies,(156) in pursuing,

transmitting to him a ministerial dispatch, of the 13th June, relative to measures recommended to the maritime powers, for the purpose of abolishing the practice of privateering. [*La Course en mer.*]

* *Liberty of the seas, peace to the world, equal rights to all nations.* In January, 1801, some valuable books, magnificently bound, were presented to the royal society of London, from the institute of France. A letter of compliment, accompanied the present, signed, *Bonaparte, President of the National Institute, and First Consul of France.* On the letter was a finely executed vignette, representing liberty sailing on the open ocean, in a shell, with the following motto: *Liberté de mer.* [Annual Register, 1801.].....T.

(156) How has England respected her allies? She has always made them victims; she has placed them between two fires. When the army commanded by General Serrurier, in the year 1799,

without exception, the navigators of all countries, in subjecting ships and cargoes to pillage, without having any personal or direct injury to avenge, which might serve as an excuse for their depredations. To attack neutral ships laden with goods, free and lawful in time of war, is an open violation of the absolute maritime law, by virtue of which nations are permitted to maintain intercourse with each other. To seize vessels, destined to draw together distant regions, and to distribute the harvests between peaceful countries, remote from each other, and who take no part in the disputes of the belligerents, is a faithless dereliction of the general cause of freedom. If Montesquieu, so esteemed by the English, had lived long enough to witness these proceedings, would he have said of that nation, "The great charter of England forbids " the seizing and confiscating, in case of war, the ef- " fects of foreign merchants, except by way of re-

marched into Tuscany, in order to drive the English and Neapolitans out of Leghorn, the English, who had transported Neapolitan troops into this dutchy for their own benefit, when it became necessary to evacuate Leghorn, were wholly occupied in loading their vessels with the goods and effects belonging to the merchants of their own nation. They refused to take off the Neapolitan garrison, who were obliged to embark in neutral ships. In the same year, when, the army under the command of General Brune, compelled the English, at the Helder, to retreat with disgrace, the thunder of their artillery and infantry was turned against the Russian troops, to oblige them to sustain, a little longer, the shock of the French; this gave the English time to re-embark their own men, and the Russians were made prisoners of war.

The English dread being attacked at home.

" prisals. It is pleasing to see a nation make this " one of the articles of her liberty."(157) It is not by these great principles that the character of this nation is to be decided. Much less are we to judge of her by the flattering picture drawn by a Frenchman, on whom she had conferred the most public and distinguished marks of esteem.

34. Neither the boldness with which the English enter on the commencement of every war, nor even the successes which they know how to secure, by means of which they alone are capable, have destroyed that profound sense of their own weakness which is felt, whenever they are attacked at home. The French marine, such as it was at the beginning of the revolution, appeared to the English too formidable a means to support a descent, the success of which would have decided the fate of England. The ignorance that guided most of the enterprizes of the executive directory, was the cause of its failure; but England experienced all the dread of invasion, and the strong impression it produced still remains.(158) This object, become more difficult of

(157) Montesquieu, Esprit des Loix, liv. 20, ch. 13. " La grande " charte defend de saiser et de confisquer en cas de guerre, les " merchandises des negocians étrangers, a moins que ce ne soit " par represailles. Il est beau que la nation ait fait de cela un des " articles de sa liberté."

(158) In the year 1797, fourteen vessels anchored in Bantry Bay. Sixteen thousand brave Frenchmen waited for the intrepid General Hoche, in order to land, but the frigate which carried him did not

Fear and weakness, make England unjust and rapacious.

execution, renders the English insolent and unjust; the fear it excites is considerate, calculating on the necessity which impels the weakest to seize every advantage afforded by the negligence or security of the strongest. It is precisely from her inability to contend, that England fights. She is, at the present day, in the same situation with the Roman empire, at the period of its decline. It can neither exist with, nor without, soldiers. When evils have taken such deep root in the body of the state, can we expect any thing but a course of conduct, inconsiderate and arrogant, towards the rest of the world, while it produces its own ruin, misery and dishonour? Every act of injustice contains within itself, a principle of destruction, that will eventually subvert the edifice, which such action was intended to support.

35. The continental powers, too long the hired satellites, and blind champions of their enemy, enlightened at length by their losses, are now sensible, that they ought to separate their cause from that of England; that it is time for them to put an end to those odious and bloody contests, in which men and territories are put at stake, but from which England derives the whole benefit, in the increase of her riches,

reach Ireland. Had it not been for this secret cause, that prevented the arrival of Hoche, the world would have been in peace, and governments tranquil. The attempt made in the year 1798, upon Ireland, where 1050 Frenchmen spread terror into the heart of Great Britain, shows what Hoche would have done, had he landed the year before.

General peace received with enthusiasm by the English.

and the extension of her commerce. Abandoned by all the coalesced powers, who had, separately, made peace, England appeared, at last, desirous of a cessation of hostilities. The French government acceded to the proposal with a good grace. After a long and painful negotiation, the able plenipotentiary at Luneville, Joseph Bonaparte, had the honour to complete, by the treaty of Amiens, on the 25th March, 1802, the great work of a general pacification, which was received at London, and throughout England, with an extraordinary enthusiasm that evinced its necessity. The same enthusiasm, the same transports of the people, were manifested on the arrival of the French ambassador, general Andreossi; these emotions were succeeded by sadness and dejection, when, at his departure, he carried with him the regrets of all who knew him.(159)

36. France, strong in its good faith, lived in security, in the midst of that peace, which, at Amiens, it had sworn to observe, while new plots were forming in England to violate this solemn treaty, which had restored tranquillity to Europe. The British minister reckoned less on the success of the English arms, on the number of their ships, and the courage of their soldiers, than upon the advantages of machinations,

(159) It is with pleasure that I here repeat the name of General Andreossi, my learned friend, who acquitted himself of this important mission with that amiableness and prudence, which characterize and distinguish him, on every occasion.

upon the violation of the laws of nature and nations, and on the corrupting influence of his gold. He wished for war, that it might furnish him with a pretext for overthrowing a government, which he dreaded to see consolidated in the hands of a great man. He attempted to attain his purpose by deceitful negotiation. In spite of the painful state, produced by such a negotiation, which, at its commencement, exhibited the most characteristic bad faith, the first consul continued to employ every means to preserve peace; by official notes, replete with wisdom and moderation, he did every thing, morally possible, to reconcile the two governments, and to place them in a situation, in which it might be easier to negotiate, and on terms less inadmissible. He could not, however, succeed in producing the same moderation in the English minister, who, long accustomed to the violation of treaties, was willing to add this new infraction to many others, of which he may be accused. Hence, those suspicions and precautions before the execution of the treaty of Amiens; hence, the delay of the evacuation of Malta, of the Cape of Good Hope, and of Alexandria, the possession of which had been weighed in the scale of interest, and not according to the tenor of solemn engagements; hence, that contempt of the law of nations, those plots laid in England against the tranquillity of France, those defamatory libels against the person of the first magistrate of the republic,(160) and the asy-

(160) If it is right for England to give the greatest latitude to the liberty of the press, it is also the public right of all polished nations,

lum and protection granted to men, who were pointed out by the French government, as dangerous to its peace.

37. This is not a gratuitous assertion. Mr. Fox has furnished convincing proof of its truth, in his speech in the house of commons, on the 24th November, 1803, in which he said, "that a journal "printed at London, provoked the assassination of "the persons who governed in France; that the barbarous libels, within, as well as without, the house, "are directed against the French government;" and at what time? the same orator asks, "at a moment, when the representative of our sovereign "is, perhaps, presented, with the usual ceremonies "to the first consul, is it decent, is it honourable, "for the members to load with opprobrious epithets, "the person, who is at the head of the French government?" Can there be any doubt on this subject, when the king of England himself, by his ambassador at Paris, in the face of astonished Europe, declared, that provided the sovereignty of Malta was granted to him, he would promise to take

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and the strict duty of the government, to prevent, to repress, and punish all attacks which may be made, by this means, on the rights, the interests, and honour of foreign princes.

In the house of lords, on the 20th December, 1792, Lord Lauderdale, reproaching ministers for their manœuvres to render popular the war against France, exclaims, "One of the most powerful of "these arts, is those atrocious libels against the French, the absurdity of which is equal to their perfidy."

measures, that the men, who, in different parts of his kingdom, were hatching plots against France, should be effectually repressed?(161) Could this new promise be more sacred, than that contained in the treaty of Amiens?(162) The engagements, then, of a solemn treaty, are not sufficient; the island of Malta must be given to the English government, to induce them to do, what integrity demanded from one power towards another, and what George III. had sworn to execute!

38. It must be acknowledged, that this conduct discovers an inconceivable absence of mind in the ministers of the English cabinet. It is no less astonishing, than their notification of the suspension of the guarantee, promised by the emperor of Russia; a notification contradicted, at the very time, by a formal letter from that sovereign.(163) It is in conse-

(161) The king of England acknowledged, their existence, since the peace of Amiens; and avowed, that even during peace, these dangerous and notorious men, were supported and protected by the British government.

(162) The text of the 5th article of the treaty of Amiens, is as follows: "The contracting parties, shall use their utmost efforts "to preserve a perfect harmony between their respective coun- "tries, without permitting any act of hostility whatever, by "sea or by land, for any cause, or under any pretext. They shall "carefully avoid every thing which might, for the future, disturb "the happy union now reestablished between them; and shall not "give any succour or protection, directly or indirectly, to those "who would wish to injure any of them."

(163) The day on which the English ambassador, Lord Whitworth, officially announced the refusal of Russia, a courier from

quence, no doubt, of a similar distraction in the English cabinet, that we hear it complain of delays in a negotiation that had not yet commenced; that it has made formidable preparations to resist armaments, not in existence; that, while it evacuated Egypt, it refused to restore the Cape of Good Hope to the Dutch; that it afterwards promised to evacuate the Cape of Good Hope, but refused to give up Malta; that it retracted that promise, and then retracted its retractation; that it proposed the independence of Malta, and demanded its possession; desisted from that demand, and demanded it again, until it could occupy the island of Lampedosa, as a military post; at the same time, that by a secret article, the chief consul was to engage not to require the evacuation of Malta, before the end of ten years. As the last result of all this puerile irresolution, and these extraordinary demands, disdaining, for once, all those pretexts under which governments often veil their shame, the king of England keeps Malta,(164) and declares war against

Petersburgh arrived from Paris, by whom Alexander renewed his guarantee, and offered his mediation, if the two powers wished to have recourse to it. The English ambassador was instantly informed, by the minister of foreign relations, M. Talleyrand, of this new accession of Russia, to the guarantee of the island of Malta, and he made no other reply, than to declare that he had received an order to leave France in 36 hours. *O mores!*

(164) Among the traits of English policy, the speech delivered by Mr. Dundas, in parliament, the 23d May, 1803, is not the least remarkable. "In whatever point of view Malta is consid-" ered, we shall see that it is of the highest importance to us. " I maintain that this island cannot be restored again to the order

France, because she will not dishonour herself by tearing out, with her own hand, one of the most important pages in the act of pacification. Could the hand which has guided the victorious armies of France, which has signed its treaties and its laws, reestablished peace in the interior, and restored the altars of religion, sign a secret and disgraceful agreement, which England attempted by menaces, to extort. (165) It must, then, be confessed, that when the English government concluded this peace,

" of St. John of Jerusalem ; that we ought to keep it for ourselves, " that we ought to keep it, not only during the war, but *forever*. " The war is undertaken for Malta, and Malta ought, henceforth, " to belong to us in full right."

Why does England attach so much importance to the possession of Malta ? Because she wishes to establish there a Levant Company. Malta will be the Bombay of this company : the Pachas, or Beys of Egypt, Tripoli, Tunis, and Candia, of the Morea, Albania, Syria, Smyrna, &c. &c. will be the Nabobs. They will excite them to revolt against the Ottoman Porte, which will figure like the court of Delhi. They will have agents near all these Pachas and Beys ; they will send some of them to Malta. They will scatter their gold with profusion, and pay liberally for all attacks they can excite against French commerce. Thus they will succeed in excluding France, Spain, Trieste, Leghorn, and Genoa, from all trade in the Levant, and will soon be heard to say, that the navigation in those parts, is a prerogative of the British crown. Thus, with a simple garrison, and a series of vile intrigues, England will expel all Europe from the commerce of the Black sea, and the shores of the Levant.

(165) *Secret article.* " His majesty, the king of England, " shall not be requested, by the French government, to evacuate " Malta, until after the expiration of the term of ten years."

England is averse to peace.

it meditated a new war ;(166) and while the rest of Europe, wearied with misfortunes and carnage, executed with satisfaction the new act of pacification, the cabinet of St. James's, desirous of more blood, refused to join in the universal joy, and would not consent, for a moment, to the repose of the world.(167)

39. The English government does not consider war, as taking up arms, to decide a controversy founded in reason, but as an attack hazarded, in order to begin an unjust quarrel. Nations, in vain, flat-

(166) In the debates which took place in the house of commons, in 1791, Mr. Pitt, after affirming that the cabinet of St. James's, had tried all possible means of accommodation with France, expresses himself thus: " It has been said, that it was a war of " death, a war of extermination, that we were about to undertake. " —Yes, such is the war we are going to make.—Again, it is " said, that it depends on us alone, to live in peace, with French- " men ! like brothers ! No ; it is prudence which commands us " to live with them like enemies."

(167) During the debates which arose in the house of lords, on occasion of the last peace, all the members, who were ministers, declared, without shame, " that they had made the " peace, for the purpose of collecting resources to recommence " the war, whenever a favourable occasion should be presented." So true it is, that all the pacifications England has concluded, since 1688, can be regarded in no other light than truces, intended to enable it to collect together means and forces, to renew the war. Mr. Pitt, who, in 1803, put himself at the head of the ministerial party, in the session of the house of commons, on the 23d April, reproached the king's ministers " for not having profited by the in- " terval of peace, to prepare for war. They wanted not" he added, " pretexts for this, and they had themselves, agreed upon " them."

ter themselves with the enjoyment of independence. England does not wish the world to be free. Affecting the absolute empire of the sea, faithful only to the laws she herself has made, she disarms with the same spirit as she makes war, that is, in order to reign over Europe, by means of commerce, and to make all nations tributary to her power. Prompted by avarice and by fear, to acts of injustice and violence, English policy is, now, forced to calculate the depopulation of all agricultural and industrious nations, for the same reasons which have induced it to seek the depopulation of India. *Englishmen* and *slaves*, according to this system, will one day be the only denominations of men in the four quarters of the world. Gold, machiavelism, all the resources of dark policy, will be employed to attain this great end ; and until the event shall be sufficiently advanced, to render it impossible for the continental powers to recede, the English will be incessantly talking of the security of Europe, and of the balance of its power, in order to incite them to weaken one another by new divisions, all the benefits of which will be enjoyed by England. The Lacedemonians, whose glory consisted only in amassing spoils in the midst of carnage, the declared enemies of the repose of Greece, reckoned peace in the number of public calamities, and terminated one war, merely to commence another. They were finally devoured by the fires which themselves had kindled.

40. When the senate of Rome resolved to destroy Carthage to its foundations, the consul, C. Marcius

Speech of the Roman consul to the Carthaginians, may be applied to England.

Figulus, by its order, delivered the following speech to the Carthaginians: "It is the sea, it is the pow- "er that you have there acquired, it is those treas- "ures which you have drawn from it, that hasten "your ruin. It is the sea which has led you to in- "vade Sicily, Sardinia, and Spain; it is this that has "induced you to violate every treaty of peace, to pil- "lage our merchant-vessels; and, in order to re- "move the knowledge of your crimes, to blacken "those who expose them. In short, it is your skill "on the ocean, that has emboldened you to re- "spect nothing, and to place your glory in a wick- "edness, which we have not always been in a situ- "ation to punish." This singular harangue, with the addition of other reasons, might very well be addressed, at the present time, to the modern Car- "thage. When we reflect," says a late writer,(168) "that the surface of the sea, on this globe, is far "more extensive than that of the land, we know "not whether we ought to smile with pity, or foam "with indignation, at witnessing the proud claim of "this handful of islanders, to rule over every sea, "and to be exclusive masters of the ocean, while, "according to the best writers on public law, they "have no appropriate right over the sea, except over "that portion of it which may belong to them, within "reach of cannon-shot from the shores of England "or Ireland."

(168) See an excellent work, entitled, *England in* 1800, vol. 1, page 186.

England is not always successful.

41. Humiliation follows close on pride, and those whose hearts are too much inflated by power, are soon compelled to acknowledge their weakness. Because she has not been vanquished in a real struggle, proud England believes herself invincible! Yet the cannon of Copenhagen has proved that she may be resisted. Latouche-Treville, by diminishing the glory of the haughty Nelson at Boulogne, humbled England, and taught her that, one day, France would break her sceptre of the seas. Algesiras is a further witness of the defeat of rear-admiral Saumarez, and of the glory of rear-admiral Linois.(169)

(169) Accustomed not to count the number of the English ships, willingly accepting the terms, imposed by fortune, of fighting an enemy of superior force, the French mariners, not long since, made Algesiras witness a glorious combat, maintained by rear-admiral Linois, with three ships and one frigate, against six ships, a frigate, and a lugger, under the command of rear-admiral Saumarez. After an obstinate contest of six hours, no longer able to bear the increasing fire of the French, the English cut their cables, and sailed for Gibraltar, after abandoning the *Hannibal*, of 74 guns, which, during the engagement, struck her colours. Three English ships were dismasted, and the others damaged in their spars and rigging.

The ship *William Tell*, commanded by the brave vice-admiral Decres, now the minister of marine, sold dearly the victory gained by the English, in 1800. She fired twelve thousand two hundred and sixty shot; her powder was completely exhausted, her rigging cut to pieces, and her masts carried away, before she struck to two ships of the line and a frigate, which she engaged and very roughly handled.

Lord Nelson was charged with the destruction of the gun-boats, collected in the port of Boulogne. On the 4th of August,

England disregards the rights of other nations.

42. The law of force ought to be executed with more address and less pride. Every nation feels itself wounded by the conduct of England. There are sacred laws of war, which nations the most barbarous observe. Why does England disregard and trample them under foot? Why does its government make that a virtue, which other nations consider as a crime? Because, the first right claimed by the English, is that of freeing themselves from every

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1801, he attacked the advanced guard of the flotilla, with thirty vessels of war, of all sizes, and was compelled to retire with loss, after having failed in his project. Ten days afterwards, he returned with more ships of the line, a larger number of frigates, brigs, pinnaces, and gun-boats, and renewed the fight. In spite of the impetuosity of the attack, directed by the admiral; in spite of the tremendous fire of the fleet, and the obstinacy of the troops, who attempted to board, four pinnaces were taken, eight gun-boats sunk, and the English every where repulsed, with a loss so considerable,* that their admiral, mentioning the affair, says "*the loss of so many brave men was incalculable.*"

M. Sibille, captain of the line, on the 27th March, in the year 1797, commander of the xebec, *Le Pierre*, with six guns, ten-pounders, and eight two-pounders, was attacked, under the fortress of Porto-Ferrajo, by three English brigs, each carrying twelve guns: he maintained a chase and fight, for five hours, and succeeded at last, in escaping the enemy, after doing him considerable damage.

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* The loss of the English was 172 killed and wounded; that of the French is not known. For the English account of the affair, at Algesiras, as well as of the attack on Boulogne, in which the circumstances are more fully and impartially detailed, see *Annual Register*, 1801. Both of these attacks, evinced more daring courage, than prudence in the English.....T.

The spirit of domination pervades the English nation.

restraint, which an observance of the principles of the law of nations might enjoin. Mankind are often blinded by pride; and England believes that her naval power will secure her against all reprisals. "We "shall send a hundred sail of the line to sea, and "who will dare to stir?" Such is the ordinary language of the English minister; and, by a fatal blindness, this nation conducts herself, as if she had already attained that degree of power which can forever impose on its neighbours. In every situation, she is actuated by the same spirit: it descends from the foot of the throne, to the lowest classes of society, and is blended with all the habits of life among the people. In England, a proverb, a trite saying, or a song, bears the impression of national pride, and aids, while it reveals, the policy of its government. Thus warlike songs were disseminated in their armies, during the war with America. The celebrated ode, *Rule Britannia,* sung at the present day at all their public exhibitions, cherishes the confidence of the people, who believe themselves inaccessible and invincible, and who, therefore, brave the power, as well as the number of their enemies. The British character is so well exhibited in the last stanza, recently added to this ode, that it may be interesting to see it.(170)

(170) The original is as follows:

"Though haughty France, with Holland, Spain,
"And Russia 'gainst thy power combine,
"Still *thine* shall be the subject main,
"*And every shore it circles, thine.*

These few words, to use the expression of Corneille, display* all England to the eyes of its rivals.

43. At this moment, an attachment to the false principle of the legitimacy of maritime empire, has drawn the British government into a war which may prove fatal to its power. Among the odious features in its character, which humanity must blush to record, may be reckoned the pretexts published by the English government, for its declaration of war against France, and the disgraceful means it has employed to paralyze the imposing forces of its rival. These means, the resources of cowardice and weakness, would have remained unknown to polished nations, had they not been adopted by England. What government but this, would make use of the inviolability of the diplomatic character, to spread every where disorder and crime.(171) What government but this,

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" Rule, Britannia! Britannia rule the waves!
" Britons! never shall be slaves."

The entire ode, with this addition, may be seen in Numbers 7 and 8, of the *Memorial Anti-Britannique*, for 1805, by M. Barrére.

* *Etaler*.

(171) The debates of the English parliament, present a multitude of precious reflections to the historian, and throw great light on the cause of most of the events in France, during the revolution. " Your efforts have, without doubt, contributed much to the estab- " lishment of the system of terror, in France," said the respectable Duke of Bedford, in the house of lords, the 27th of January, 1795, " and our minister has a large share in those misfortunes " which have followed."

would wish the basest conspiracies to be directed by ministers, the representatives of their sovereign.(172) But, though France had more than once experienced, that the policy of the cabinet of St. James's, was not under the guidance of the sacred maxims of the law of nations, the circumstances attending this last event, have made this truth more evident, at the same time, that the actual and necessary influence of maritime affairs on the fortune of the republic, have rendered its consequences infinitely more important and decisive. France will receive a very essential service from the English, if she establishes it, as a settled maxim of state, that its preservation and prosperity depend on its marine, and the liberty of the seas. It will, then, be of no consequence, if England, as she has always done, swears in her heart, even when signing treaties, *eternal hatred to France.*

In a work entitled, "*View of the causes and consequences of the present war with France,*" 3d ed. page 27, Mr. Erskine, a member of the English parliament, speaking of the monstrous government of 1799, says, "the British minister was the guardian angel "that hovered over France, and the sole creator of her ominous and "portentous strength.—In the same manner, the cruel confiscations, and the judicial murders, which, under the same tyrannies, "destroying one another, disgraced the earlier periods of the republican revolution, may be mainly ascribed to the same predominant causes."

(172) See the correspondence of the English minister, Mr. Drake, with the court of Bavaria.

All nations interested to oppose the usurpations of England.

44. Frenchmen, who have fought, during the last war, with as much generosity as success, for their independence and political liberty, will not, assuredly, hesitate to contend for the liberty of the seas. The maritime powers of the north of Europe, have already perceived the necessity of recurring again to the principle of free navigation. They have discovered, at length, the true interests of the human race. They may, perhaps, defer the hour of vengeance, the better to chastise an enemy who incessantly provokes a deadly war among nations. A new system will, hereafter, be opposed to its ancient despotism. This is not a diplomatic question, nor a contest of particular factions. All parties must be equally offended; all states are equally wounded by the impious system which the English minister pursues with renovated fury. To warn nations to be on their guard against the arts of ambition, to unveil its motives and aim, is a duty prescribed by humanity; a prudent vigilance exercised for the common good. To confederate together, to punish the base attempts of cupidity, is to avenge the cause of law and of man; it is practical justice. It is right to employ force against those who declare themselves our enemies, who violate the sacred laws of social intercourse, who refuse us our due, who seize upon our portion of the common domain of nature, who seek to deprive us of those advantages which belong to us, and to destroy them for ever.(173) The period is not far distant,

(173) "Such a maritime league," says M. Arnould, in his excellent work, entitled, *Systeme maritime et politique*, page 341,

Opinion of Mably, as to the claim of England to the empire of the sea.

when the prediction, made fifty years since, by the sage Mably, concerning England, will be fulfilled: speaking of the policy of that country, he thus expresses himself: "The project of becoming sole mas- " ter of the sea, and seizing on all the commerce of " the world, is not less chimerical, nor less ruinous, " than the scheme of an universal monarchy upon " land. It is to be wished, for the happiness of Eu- " rope, that England would be convinced of this " truth, before she learns it by her own experience. " But let England abuse her strength, let her seek " to exercise tyranny over commerce, and all those " nations who have ships and seamen, astonished at " not having before believed France, will soon unite " together to aid her, in avenging her wrongs."

45. May the immortal Bonaparte, who, by so many brilliant victories, has promoted this system,

" will be alarming to England, who will have to dread, at the " same time, the activity of cruisers, the revolts in Ireland, de- " scents on her coast, the desertion of Portugal, and from that " period, the diminution of precious metals, the defection of her " American colonies, the ruin of her fisheries in Newfoundland, " revolutions in India, disorders in her finances, and the vio- " lent agitation of all the constituent elements of her politi- " cal machine, and, of every part of its factitious prosperity. " Such is the destructive fate, which its government is speedily " preparing for Great Britain, by persisting in exhibiting to all " Europe, as it has done, during the 18th century, the English " marine, like a formidable colossus, which, by its own strength, " and without continental aid, may triumph over every maritime " confederacy, if all the nations, interested in the liberty of the " seas, do not unanimously swear, eternal hatred to its tyranny."

The friendly union of England and France is desirable.

soon destroy this pretended empire of the seas,* the effect only of pride, which dishonours a nation otherwise philosophic, enlightened, and generous! May two nations, formed to esteem each other, be united for ever, augment the mass of knowledge, for which they are distinguished, and give to Europe the pleasing satisfaction of a maritime peace, firm and unalterable!

* We have never understood, that Great Britain claimed any exclusive empire, or sovereignty, over the main ocean. All their writers acknowledge that the high sea, is the common pathway of nations, and that whatever is done there, is to be regulated and decided upon, by the law of nations: even their claim to the dominion of the seas, which surround their island, is admitted, by later writers, to be extravagant and vain. This pretended empire, or sovereignty, is reduced to the empty honours of the flag, which certain nations may have agreed, by treaty, or otherwise, to pay, as an acknowledgment of the superiority of the naval power of Great Britain, in the adjacent seas.—*Vide post*.....T.

CHAPTER II.

OF THE TERRITORIAL SEA.*

ART. I.

Of the Empire of territorial Seas.

§ 1. THE sea, as well as the land, ought to be considered as consecrated to the wants, the conveniences, and enjoyments of man. In this point of view, it presents the same properties, and the same considerations that gave rise to the establishment of territorial sovereignty. All that is said of land, as to the principles and effects of domain and empire, is applicable, therefore, to territorial seas.

2. When, says Bynkershoek,(174) the face of the earth became changed by occupancy, and the rights

* *La mer territoriale.*

(174) Bynkershoek, *de dominio maris,* cap. 2. *in princip. Sed quemadmodum simplicissima sunt cunctarum rerum initia, occupatis terris, non aliud mare occupatum videri potest, quam quod terras alluebat. Oras quippe tantum legebant veteres, non ausim ulterius fragilem committere truci, pelago ratem. Igitur in mare littoribus proximum cum descenderent, animo sibi hoc habendi præcipuum, vel piscationis, vel transvectionis, vel qua alia causa ejus dominium possessione quærebant.*

of domain were introduced, the sea, which bathed its shores, was not abandoned to its natural liberty. Human affairs, in their commencement, proceed with the greatest simplicity. In the first ages of the world, the sea adjacent to the coast, belonged to the first occupier of the main land, as well on account of its utility for fishing and transportation, as because it was considered as an appendage, or rather, an accession to it.

3. Domain extends to those things only which may be exhausted by use, and are easily occupied.(175) The productions of the sea are limited. The land does not yield the same fruits in every region, nor does the sea, in all parts of the world, afford the same riches. Coral, pearls, amber, tunnies, and whales, which constitute the richest class of marine productions, are found only, or, at least, in greater abundance, in the Red Sea, on the coasts of Sardinia, in the east, at Greenland, and the north.* Can it be

(175) *Nihil enim vetat occupata principali re, etiam accessiones occupatas censeri.* Puffendorf *de objecto domin.* lib. 4, cap. 5, § 1, 2, *et* 8. Hertius *in nolis* ad. n. 6.

* The enterprise of the Americans, has extended the whale-fishery to the south. The daring spirit with which it is carried on by them, is thus described, by a British orator, in 1774: "Pass by the other parts, and look at the manner in which the "people of New-England have, of late, carried on the whale-"fishery. While we are following them among the tumbling "mountains of ice, and behold them penetrating into the deepest "frozen recesses of Hudson's bay, and Davis' straits; while we "are looking for them beneath the arctic circle, we hear that "they have pierced into the opposite region of polar cold—that

doubted, that the rich pearls of Bahrem,(176) el Kalif, and Ceylon, may lawfully become the property

" they are at the Antipodes, and engaged under the frozen ser-
" pent of the south. Falkland-island, which seemed too remote,
" and too romantic an object, for the grasp of national ambition,
" is but a stage and resting place, in the progress of their victo-
" rious industry; nor is the equinoctial heat more discouraging
" to them, than the accumulated winter of both the poles. We
" know that whilst some of them draw the line, and strike the
" harpoon, on the coast of Africa, others run the longitude, and
" pursue their gigantic game along the coast of Brazil. No sea,
" but what is vexed by their fisheries. No climate that is not a
" witness to their toils. Neither the perseverance of Holland,
" nor the activity of France, nor the dexterous and firm sagacity
" of English enterprise, ever carried this most perilous mode of
" hardy industry, to the extent to which it has been pushed by
" this recent people; a people who are still, as it were, but in
" the gristle, and not hardened into the bone of manhood."
Burke's Speech, for conciliation with the American colonies.—Thirty years of rapid advancement towards maturity, has not abated the vigor and hardihood of American enterprise; and, besides the extension of the whale-fishery, a new source of wealth and industry, has been discovered. Seals *(Phocæ)* are taken in immense numbers, on the islands of the pacific ocean; their skins have become a most valuable article of commerce. The islands, at which they are principally caught, are Falkland-island, Juan Fernandez, Massafuero, southern Georgia, Tristan d'Acuna, St. Paul, and Amsterdam. A single ship has been known to carry 60,000 seal-skins to the Canton market, where they are exchanged for teas, silks, nankeens, and other productions of China. The oil also of the seal, as well as that of the sea-elephant, is excellent, and would be a valuable article; but the skins being the principal object of attention, the oil has been neglected.....T.

(176) The island of Bahrem or Baharin, in the east, lies in the Persian gulph. The Portuguese, when they possessed Ormus and Moschuta, were masters of this island: it belongs, at present,

In certain respects, the sea may be appropriated.

of an individual? As the sea, in regard to certain productions, is not inexhaustible by use, and as the people, to whom those favoured spots belong, have it in their power to appropriate to themselves any productions within their reach, in the same manner as they have assumed the domain of the lands they inhabit, reason dictates, that the sea should be regarded, in that case, as susceptible of property; and this, without being repugnant to the principles of the universal law of nations, since it is a consequence only of the territorial domain.(177)

to the Sophi of Persia, who, by the aid of the English, wrested it from the Portuguese. The pearl-fishery of el Kalif, is found on the coast of *Arabia Felix*, opposite Bahrem. Ceylon, has also a pearl fishery, in the sea of Manar, a large town of this island. These pearls are held in the highest estimation, in the east, on account of their whiteness and brilliancy. Some of them, but very rarely, weigh four carats. Large pearls, of an irregular figure, are caught on the coast of Japan; but the Japanese, are not curious in their gems. They fish also for pearls, along the coast, in the gulph of Mexico, as well as at Cubagne, at five leagues distant from New-Andalusia, in the island of Marcherita, or the Marguerites, at the distance of a league from Cubagne, and at Comogate, near Terra Firma; they are found, also, in the river de la Hacha, called Hancherie, and at St. Martha, about 60 leagues from de la Hacha. Pearls may be obtained, but few in number, in the South sea. Scotland and Bavaria, have their pearls too, but none have yet been found, that bear a comparison with the oriental pearls.

(177) Grotius himself, one of the warmest defenders of the liberty of the sea, as will presently be seen, acknowledges this truth, in his work, *de jure belli ac pacis*, lib. 2, cap. 3. §. 8. *Ad hoc exemplum videtur et mare occupari potuisse ab eo, qui terras, ad latus utrumque possideat etiamsi aut supra pateat ut sinus, aut supra et infra ut fretum, dummodo non ita magna sit pars maris, ut non cum terris comparata portio earum, videri possit.*

Sovereigns have a right to forbid strangers entering their ports, &c.

4. Every nation may appropriate things, the use of which, if left free and common, would be greatly to its prejudice. This is another reason, why maritime powers may extend their domain along the sea-coast, as far as it is possible, to defend their rights, as will be shewn in the sequel. It is essential to their security, and the welfare of their dominions, that an unlimited freedom of approach to their territories, should not be allowed to every one, especially, with ships of war, whose presence may prevent the access of commercial nations, and interrupt navigation.(178)

5. If we attend to what ancient writers have said, on this subject, as well as to the history of every age, we shall find, that the right of the sovereigns of the sea-coast, to interdict the ships of strangers from entering, or approaching, the harbours and roads, within their dominions, has been established without interruption. If suffered to come within their territory, it has been in consequence only, of a permission given, after a demand made for that purpose, or as a fa-

(178) Paulus, in l. 14. tit. 10, lib. 47. *Digest. de injuriis.— Sane si maris proprium jus ad aliquem pertineat, uti possidetis interdictum ei competit, si prohibeatur jus suum exercere, quoniam ad privatam jam causam pertinet, non ad publicam hæc res, ut pote cum de jure fruendo agatur quod ex privata causa contingat, non ex publica ; ad privatas enim causas accommodata interdicta sunt, non ad publicas.*

Egyptians and Carthaginians prohibit strangers from entering certain ports

vour granted to humanity; but we do not ask as a favour, or intreat for what is due to us by natural right. As the right of sovereignty along the seashore flows from the territorial domain, the sovereign exercises his natural and legitimate empire, when he forbids the vessels of strangers to enter his ports or roads, or prescribes to them certain limits for their approach. He has acquired this right, by the sacred and inviolable law of property.(179)

6. It has already been remarked, that a principle of policy among the Egyptians, induced them to shut their ports against strangers, and, that notwithstanding this inhospitality, they were regarded as the wisest people of antiquity. Carthage, not content with loading the Libio-Phœnicians of Bisacene, with heavy taxes, prohibited them from every kind of commerce with strangers, as appears from the ancient treaties formed between this republic and the Romans. The latter engaged not to navigate beyond the promontory of Bello, and on this side of that of Mastia and Tarseio;(180) that is, on the coasts of the Bisacene,

(179) *Eorum, quæ natura fuerant communia, quod cuique obtigit, id quisque teneat; eo quod si quis sibi appetet violabit jus humanæ societatis.* Cicero. *de officio.* lib. 1, cap. 4.

(180) Polybius, lib. 3, p. 284. The promontory of Bello, is now named cape Porto Farina: Mastia, is cape Blanco, and Tarseio, is that of Serra. Montesquieu, in his *Esprit des Loix, lib.* 21, *c.* 11, says, that "Carthage, had a singular law of nations, 'which sentenced all foreigners to be drowned, who traded in "Sardinia, and towards the pillars of Hercules: its political law,

The Greeks restrain the navigation of the Persians.

and of the district of Camisse, bordering on the great Sirte.(181) The Greeks also obliged the king of Persia not to allow his fleets to approach their coasts nearer than the distance of a horse race ;(182) he even bound himself not to navigate, with armed vessels,

" was not less extraordinary ; it forbade the Sardes from cultivat-
" ing the earth, under the pain of death." " We see, also, in
" the treaty which put an end to the first Punic war, that Car-
" thage was principally attentive to preserve the empire of the
" sea, and Rome that of the land."—See what has been said above, *Art :* 2, § 9, in speaking of the Carthaginian empire of the sea.

(181) In fertility, this district surpasses the rest of Africa; the earth produces, according to Herodotus, book 4, ch. 198, three hundred for one. This district is now a part of the province of Mecellatos : it is yet very fertile; but the account of Herodotus, appears exaggerated.

(182) Plutarch, *in vita Cimonis.* This horse race, called by the Greeks ἱππου δρομος, is a day's journey of a horse, or the distance a horse can go in a day, as is proved by Barbeyrac, in his note on Grotius, *(De jure belli ac pacis, lib.* 11, *c.* 3, § 15*)* from several passages of Aristides, *in orat. Panatheniac ;* to which may be added, the authority of Demosthenes, a more ancient orator, *(Orat. de falsa legat.)* in a passage, in which he speaks of Callias, who was deputed, on the part of the Athenians, to conclude this famous treaty. Grotius, in citing this passage, is deceived, in limiting the distance of the day's journey of a horse, to forty stadii, which was no more than a league and two-thirds, reckoning three miles to a league. The stadius is known to be 125 paces. Plutarch, as Paulmier de Grentemenil has observed, explained what was then understood by a day's journey of a horse, when he says, towards the close of his life of Cimon, that while that general had the command, no Persian courier, or horse, dared come within four hundred stadii, that is, sixteen leagues and two-thirds, of the sea.

within the Cyanean rocks, and the Chelidonian islands.(183)

7. In the treaty, which suspended, by a year's truce, the Peloponnesian war, there is an article mentioned by Thucydides, that prohibited the Lacedemonians from sending any ships of war to sea, or any vessels of more than twenty tons burthen.(184)

In the treaty of peace, concluded between Rome and Antiochus, this prince is prohibited from having more than twelve ships of war, to keep his subjects in obedience.(185) Another article in the same treaty,(186) purports, that the vessels of Antiochus should remain on this side of the territory of *Calicadna*, and of *Sarpedon*, unless they were obliged to go further, to carry, either the tribute which this prince was bound to pay, or ambassadors, or hostages. In a law in the

We may further remark, with Barbeyrac, a mistake into which Eisenchmid falls, in his treatise *de Ponderib. et Mens. Veterum, &c.* This learned author, confounds ἱππικος δρομος, with what Plutarch, in his life of Solon, simply calls ἱππικου, which contained four stadii, or 500 paces; but the latter word, signifies the space of ground, that a horse runs over, when he goes at full speed, in a race, which, it is evident, cannot be a day's journey.

(183) *Grotius, de jure belli ac pacis, lib. 2, cap. 3, § 15.*

(184) Thucydides, lib. 4, cap. 118.

(185 Appian, *de bello Syriaco*, p. 181.

(186) Titus Livius, lib. 28, cap. 38.

Restrictions laid on foreign vessels by the Egyptians.

code of Justinian,(187) we observe, that in the time of the lower empire, a treaty was concluded between the Romans and Persians, by which it was agreed, to this effect: *Mercatores tam imperio nostro, quam Persarum regi subjectos ultra ea loca in quibus fœderis tempore cum memorata natione nobis convenit: Nullus igitur post hac imperio nostro subjectus ultra Nisibin, Callinicum, et Artaxatam, emendi, seu vendendi species causa proficisci audeat;* and the reason of the prohibition is given; *Ne alieni regni (quod non convenit) scrutentur arcana.*

8. Sometimes, a free navigation was allowed to allied nations, but on condition that their vessels should not touch at a certain port; that the goods should not be exposed to sale, except at a particular place of trade, designated by the treaty. We read in Herodotus,(188) that Amasis, king of Egypt, imposed a law on all foreigners, trading with his subjects, that they should have free access only to the city of Neucratis, a commercial place; and if they touched elsewhere, they were bound to make oath that they were compelled, by stress of weather; they were then permitted to sail to the mouth of the Canopus, or if they could not reach so far, to send their goods in boats, up the river. The senate of Rome made a

(187) Code, lib. iv. tit. 63, l. 4, *de commerciis et mercatoribus.*

(188) Herodot. *histor.* lib. 2, cap. 188.

decree, by which they constituted Pompey, general of the sea, to clear the coasts of the republic of pirates, who, at that time, infested the Mediterranean; and his command was extended to the distance of four hundred stadii, about fourteen of our leagues. The senate supposed the coast, which comprehends the land as well as the sea, extended fourteen leagues on the main land, and fourteen leagues to sea.

9. Modern history, in like manner, furnishes many examples of treaties of commerce, of various kinds, among nations, and of particular prohibitions, since a more extended navigation has made them acquainted with new sources of wealth. The kings of Castile and Portugal, having discovered, about the same time, new routes on the ocean, divided, between them, the navigable world. Elizabeth, queen of England, concluded a treaty with Sebastian, king of Portugal, in which the English were prohibited from navigating in the seas of countries, conquered by the Portuguese. Disputes, afterwards, arose between the Portuguese and English merchants. The latter, subsequent to the year 1552, carried on with the negroes of Guinea, on the coast of Africa, a very lucrative trade in gold dust: the former, who first discovered the coast, resorted to arms, to restrain, as far as possible, this commerce. They often fought, and captured each other's vessels. The king of Portugal, desirous of restoring a good understanding between the two nations, sent Francis Gerard to England, to treat with Elizabeth. This envoy succeeded

in concluding a treaty, by which the English were permitted to trade only with the kingdoms of Portugal and Algarva, the islands of Madeira, and the Azores, and on the coast of Barbary: all the Portuguese possessions in the Indies were expressly excepted.(189) Philip IV. king of Spain, in the treaty of Munster, in the year 1648, by which peace was concluded with the states general of the United Provinces, agreed, by the 5th and 6th articles, that the subjects of Spain should not extend their commerce any farther in the Indies; a stipulation which afterwards occasioned very warm disputes between the two countries.

10. Navigation is further limited, when a particular route is prescribed to navigators. Thus, the king of Portugal, in the 21st article of the treaty made in 1669, with the United Provinces, stipulated, that the Dutch should not go in a direct course to Brazil, but that in going and returning, they should touch at Portugal, and pay there the same duties as the Portuguese. Several of the sovereigns of India do not allow European vessels to enter into every part of their dominions without distinction; but only at certain ports; nor do they suffer merchants to trade where they please, but only at particular places designated for commerce.(190) During the war be-

(189) Camden *annal. Britann.* 1571.

(190) Tavernier, *Voyage aux Indes,* liv. 1.

tween Spain and the United Provinces, James I. king of England, caused certain limits to be fixed along the coasts of his kingdom, within which he declared he would not suffer any belligerent power to pursue his enemy. He further made known, that to maintain this prohibition, he should keep ships of war to convoy all such vessels, as wished to go in or out of his ports.(191) In a treaty, dated the 14th September, 1689, between the king of France and the dey of Algiers, it was stipulated, that it should be renewed at the accession of each dey, and that the Algerines should not make any prizes within ten leagues of the coast of France. Russia, in our time, has followed this example in the last war she carried on with the Ottoman Porte. France, Tuscany, the republics of Venice and Genoa, did the same in the war between England, and the United States of America.

11. Thus, as often as reasons of state, or any other public consideration may require a government to prohibit foreigners from navigating in their territorial seas, it may lawfully be done without infringing general liberty, or offending against the laws of nature.(192) On the same principle, is founded the

(191) Selden. *Mare Clausum*, lib. 2.

(192) *Singularibus pactis populorum et principum conventis commerciorum jura contineri, et peregrinum finibus arcere, atque etiam fines prætervectum ejicere licet; non modo si bellum indictum sit, verum etiam ipso pacis tempore, ne civium mores peregrinorum consuetudine corrumpantur.* Bodinus, *de republica, lib.* 4, cap. 1. et

usage, constantly followed by the powers of Europe, of not admitting into their ports, whole fleets of other nations, but only a certain number of ships, except they belong to their allies.(193)

ARTICLE II.

Of the Extent of a territorial Sea.

§ 1. HAVING established the general principles on which the empire of territorial seas is founded, it remains to define what is meant by the terms, *open sea*, and *inclosed sea*,* that we may better ascertain what ought to be comprehended under the denomi-

lib. 6, cap. 2. *Consequens est, ut urgente homines a negativa illa communione discedere, adeoque dominium, quod communioni illi opponitur, introducere animo potuerint.* Heineccius, *Jure Nat. et Gent.* lib. 1, cap. 9, § 234. Selden, *Loc. Cit.*

(193) Mably, *Droit public de l'Europe*, tom. 2, p. 300. "A "l'egard des vaisseaux de guerre, il est d'usage de regler le nom- "bre de ceux qui peuvent entrer dans un port, et ce nombre est "ordinairement *de six vaisseaux.*" In the treaty concluded between England and Holland, in 1667, confirmed, by subsequent treaties, the 4th article fixes the number of ships of war at eight, that may be allowed to anchor in their respective ports. In the treaty, concluded between the French republic, and the king of the two Sicilies, the 11th October, 1796, it is agreed, by the 4th article, that the number of armed ships, received into their ports, shall not, at most, exceed four.

* *Mare liberum.—Mare clausum.*

nation of *territorial sea*, and to corroborate the opinion advanced in the next article, as to the extent of this empire. It is certain, and all writers on this subject have agreed, that that must be called an inclosed sea, the shores of which, like great gulphs, as well as the mouth, communicating with the high sea, belong to one nation.

2. The authors, who have written on maritime rights, are not agreed as to the claims of certain powers to the sovereignty over those gulphs, whose shores do not wholly belong to them; such as that of the ancient republic of Venice, over the Adriatic sea, and that of England over the English channel.* They equally differ in opinion in regard to certain tracts of sea, not forming a gulph, as that of the Ligurian sea, in relation to the republic of Genoa.

3. Writers are still more divided in opinion as to the claim to a general sovereignty of the sea, asserted by some powers, in the height of their prosperity, and founded only on the superiority of their maritime strength, or the celebrity of the victories they have gained: a pretension which must appear, to every just and considerate mind, illegal, and injurious to the rights of mankind. "What would they think," says Galliani, in speaking on this subject, "of a sove-"reign, who, having two hundred thousand men in "his pay, should, for that reason, suppose himself

* *La Manche.*

General sovereignty of the sea, absurd and unjust.

" the master of those princes who had only thirty or " forty thousand men in their service? Would it not " be confounding the ideas of right with those of " power, and serve to establish a theory always un- " just, often arrogant, and sometimes, in spite of its " success, vain and ruinous?"(194) It follows, therefore, that there can be no just title to the sovereignty of these seas, any more than to that of the high sea, unless there have been particular treaties to that effect;* and these will be binding on those nations

(194) Galliani, *de Doveri de' Principi neutrali in tempo di guerra, etc.* lib. 1.

* See on this subject, the commentary of Valin on the marine ordinance, vol. 2, book 8, page 689, ed. Rochelle, 1776.

A very late writer, Dr. Arthur Browne, professor of the civil law, in the university of Dublin, in a recent work, entitled, *A compendious view of the civil law, and of the law of admiralty*, makes the following judicious remarks, on this subject:—" The disputes about " *Mare clausum* and *Mare liberum*, engrossed, in the last century, " the attention of all Europe. They were occasioned by the claim " of the English to the dominion of the neighbouring seas, even as " far as the opposite coasts; a claim, which could have been found- " ed only in treaty, and if it rested merely on use, was supported " solely by power; the licence of Britain was the sole key to the " navigation of those seas; the claim was extravagant as it was " haughty; the sea, at least, out of cannon-shot of the coast, is " common to all; yet it was supported by the learned Selden, and " required, at that time, confutation from the able pens of Grotius " and Bynkershock. I do not mean to impeach that dominion of " the sea, and respect demanded by the British flag, which parti- " cular treaties concede, or which the general consent of Euro- " pean nations grants, in the four seas, to the undisputed superiority " of the naval power of Britain."—Vol. 2, p. 9....T.

Difference of opinion as to the nature and extent of territorial seas.

only who are parties to them; but are no way obligatory on others, against whom you cannot set up a tacit consent, or absolute neglect of frequenting certain seas; a non-usage which some have, in vain, wished to have considered as a prescription.(195)

4. Though, at the present day, there is but one sentiment, among writers, on this subject, as will be shewn, in the following article; and though, according to the consent of all maritime nations, it cannot be questioned, that the nation in possession of the shore, is, at the same time, sovereign of the adjacent sea,(196) yet there is not an unanimity of opinion, and, much less, an universal agreement, among nations, (so necessary for the good order and interest of commercial states) either as to the nature or the extent of this sovereignty. These opinions, moreover, have varied in different ages, as much as the different systems, adopted, as to the extent of territorial seas.

5. Since the time of the celebrated BALDUS, it has been asserted, that the territorial sea extended sixty miles from the shore. In the rubrick to the title, *De rerum divisione*, (Digest, lib. 1, tit. 8,) and to the 3d

(195) Puffendorf, *de Jure Nat. et Gent.* lib. 4, cap. 5, et 6. Bynkershoek, *de Domin. Mar.* cap. 1, et 9.

(196) Bynkershoek, *de Dom. Mar.* cap. 1, et 9. Heineccius, tom. 2, exercit. 8, cap. 1, § 1, 2, et 3.

law of the Code, (lib. 4, tit. 33,) *de nautico fœnore*, he appears to adopt that principle. Bodinus,(197) as well as Targa,(198) is of the same opinion. Loccenius(199) has fixed the extent, at the distance of two days journey from the shore ; and Grotius limits it to that point which can be defended from the land.(200)

6. The greatest number of writers, however, carry the extent of dominion to the distance of one hundred miles.(201) This opinion, though not supported by demonstrative reasons, has so far prevailed in our days, that it has been adopted as a fundamental rule of public law, by force of which, sovereigns have, without reserve, disposed of the sea, to that distance from the land. An instance of this is to be found in the diploma given by king James, of Arragon, to the city of Cagliari, in Sardinia, dated at Barcelona, 23d August, 1327, from which the following is an extract :

(197) Bodin, *de Repressaliis*, cap. ult. et *de Republica*, lib. 1, cap. 10. *Jure quodammodo principum omnium mari accolarum communi receptum est, ut sexaginta milliaribus a littore princeps legem ad litus accedentibus dicere possit, atque id judicatum esse in causa ducis Allobrogum.*

(198) Targa, *Ponderazioni marittime*, ch. 2, n. 3.

(199) Loccenius, *de Jure marit.* lib. 1, cap. 4, § 6.

(200) Grotius, *de Jure bel. et pac.* lib. 2, cap. 3, § 13 et 14, n. 2.

(201) Solorzan, *de Jure India*, lib. 2, cap. 6, n. 22, et lib. 3, cap. 3, n. 75, et sequent. Casaregis, *de Commerc.* disc. 136, n. 1, and 2, et disc. 174, n. 12, et sequent. D'Habreu, *sobre las presas*, cap. 5, n. 2.

" Assignamus, damus et limitamus perpetuo castro jam dicto Calaris, videlicet, versus villam Decimi usque ad villam ipsam Decimi exclusive, inclusive vero damus dicto castro pro termino loca vel villas, quæ sequuntur, videlicet, Sancta Gilla Pirri, Sovetano, Pauli Palma, Selargio, Quarto, Toto Quarto Jossu, Quarto Bonino Cepolla, cum capite de S. Ella; nec non terminos eorumdem locorum, et etiam castrum et villam de Bonariæ et alia castra loca, et casalia, infra hos limites constituta, *et intus mare centum milliaria;* salvo tamen et nobis, et nostris semper, et in omnibus retento jure portus et aliarum nostrarum."

7. Valin, in his commentary on the marine ordinance of France, of 1681, lib. 5, tit. 1, combats the last opinion; and, in order to fix the extent of the sea, which ought to be subject to the dominion of the proprietor of the adjacent shore, he proposes to try the sounding lead, by means of which a precise limit may be assigned to the territorial sea, at the place where the lead will no longer reach the bottom. But Valin admits the insufficiency of this mode, in the case where the coast is so steep, that soundings cannot be found at, or near the land. In such a case, he wishes the extent of maritime jurisdiction to be limited by the reach of a cannon-shot, and not further. " For in short," he observes, " the ocean belongs to no one, and the conclusion naturally to be drawn from this is, that all nations are permitted to navigate it; so that one nation cannot deprive another

Opinion of Valin as to the extent of maritime jurisdiction.

" of this liberty, without injustice, and without a " boundless, and even extravagant ambition."*

8. What has just been cited from Valin, ought to be regarded as the mere observation of the author, who acknowledging the necessity of fixing the precise limits of maritime sovereignty, determines to adopt the distance, established by different treaties of peace and commerce, of two leagues from the coast; so that beyond that distance, navigation ought to be free, and exempted from all visits of revenue officers, or *guarda-costas;* and within which distance, every ship may be considered as liable to the suspicion of illicit trade, and, consequently, subject to visitation and search, and the goods to forfeiture, if the captain does not prove that he has been compelled, by foul weather, to approach so near the coast. He, at the same time, considers, that this rule does not prevent the sovereignty of the sea, nor the jurisdiction and right of fishing, from extending beyond two leagues, either by virtue of treaties of navigation, or in pursuance of the rule he has pointed out, the extent of soundings, or the reach of cannon-shot; a rule, which should have been acknowledged by all the world, if we must believe the journal of commerce, of the month of May, 1759; but this assertion, he adds, is contrary to truth and fact.

9. HUBNER, in his treatise *de la saisie des batimens neutres*, tom. 1, ch. 8, § 10, does not speak so posi-

* See also, Puffendorf, *Jus Nat. et Gent.* lib. 4, cap. 5. § 9....T.

tively on the subject. He confesses how difficult it is to fix, with precision, the extent of the maritime jurisdiction of the nation possessing the coasts ; he thinks the limit ought to be, at least, equal to the reach of a cannon-shot, in order more effectually to announce to transgressors, their infraction of this boundary.

10. VATTEL, in his work, *du Droit des Gens*, liv. 1, ch. 23, § 289, is of the same opinion. He observes that, at the present day, all that part of the sea which is within cannon-shot of the coast, is considered as making part of the territory.*

11. BYNKERSHOEK, in his dissertation, *de dominio maris,* is of opinion, that the dominion of the adjacent sea, extends as far as possession can be held from the main land ; and that all that portion of the sea which he can defend and protect, is subject to him, even when it is not frequented by his own navigators.(202) This author, pursuant to this principle, adds, that the defence of territory consists in the force of arms, and that, as of all arms, cannon can carry the action of its force to

* The jurisdiction of the District Courts of the United States, in cases of capture, extends to a *marine league* from the coast. See Laws of the U. S. vol. III, p. 91.....T.

(202) Ch. 2, § 3. *Existimem itaque eo usque possessionem maris proximi videri porrigendam quousque continenti potest haberi subditum : eo quippe modo quamvis non perpetuo navigetur, recte tamen defenditur et servatur possessio jure quæsita.*

Opinion of Sarpi, as to the extent of the territorial sea.

a greater distance, the possession of the sea ought to extend to the reach of a cannon-shot, fired from the shore.(203)

12. Sarpi, in his work entitled, *Del dominio del mare Adriatico*, in examining the opinions of lawyers, as to the extent of that part of the sea, which may belong to each city, situated on the shore, gives his own opinion, in the following terms. "This extent is "equal to what may be wanted by a state for its "own use, without injury to its neighbours. Thus, "a large maritime city, possessing a large extent of "territory, from which it draws its subsistence, will "have but few citizens desirous of following the oc- "cupation of fishing, and will make but little use of "the sea. On the contrary, a small city, possessing "only a very narrow territory, and deriving its sub- "sistence from fishing, will have need of a large "extent of sea. This is what lawyers meant, "when they fixed the extent of the sovereignty of "the sea, at a hundred miles from the shore; it is "using a round, or determinate number, for an ar- "bitrary and uncertain number; as much as to say, "that cities have the dominion of so much of the sea, "as is necessary for their wants, without impairing "the right of others, though it should extend to the "distance of one hundred miles."(204) It appears

(203) § 5. Ibid. *Quare omnino videtur rectius eo potestatem terræ extendi, quousque tormenta exploduntur; eatenus quippe cum imperare, tum possidere videmur.*

(204) Ella è tanto grande, quanto può adoperare in suo uso senza injuria de'vicini; perchè una grande citta sul mare, la quale

almost certain, that from the time of Sarpi, the empire of the Adriatic sea, belonged to Venice, in those parts of it, at least, in which she was able to afford protection, and to make her dominion respected; but it is very doubtful whether other powers are at all disposed to acknowledge, at the present day, this absolute sovereignty, over the whole extent of the Adriatic, as claimed by the ancient republic. Such a pretended empire is respected, as long as the nation claiming it, is in a situation to maintain it by force; but it falls with its power.

13. The naval strength of England enabled its sovereigns to assume the empire of the seas, by which their island is surrounded, as far as the opposite shores of the continent of Europe, though not proprietors of them. Selden pretends, that in the time of Edward I. this maritime empire of England, was recognised by a great part of the nations of Europe;(205) the republic of the seven United

abbondi di siti terrestri, dove cavi il suo vitto, avrà pochi, che vogliano fare il mestiere di pescatore, e si valerà di poco mare. Al contrario una piccola città, con poco di commdità in terra, attendera a cavar il vitto dal mare, e si valerà di gran-parte di esso; e non altrimenti hanno voluto intendere i guireconsulti dei cento miglia, ponendo un numero determinato per un incerto: cioè le città sono padrone di tanta parte di mare, di quanta hanno bisogno di valersi senza ingiuria d'altri, se fossero ben cento miglia. Sarpi. *Dom. del. mar. Adri.* scrittura. 3.

(205) Selden, *Mare Clausum* lib. 2, cap. 27, and see ante ch. 1, article v. § 10, where this fact is controverted. [See also the note of the translator, *ib.* page 128.]

Dutch agree to salute the English flag.—Contrary conduct of France.

Provinces, in some degree, acknowledged it, by the treaty of Breda, in 1667, at least, as to the honours of the flag;(206) but the express, or tacit consent of all the powers interested, is necessary to establish such a right on a solid basis; and so far is England from having any thing of this kind to offer, that it has been proved, on the contrary, that this consent has never been given on the part of France, who would not countenance such a pretension of Great Britain. Louis XIV. would not allow, that the channel should be called in the same treaty of Breda, either the English channel, or British sea.(207.) The pride of the English must have been humbled by this conduct; but it was not a time to despise the marine of France.

(206) There is another treaty concluded between the same powers, in 1674, in which, England, by the 4th article, fixes the limits, within which the salutation of her flag, by the United Provinces, is required; they extend, from cape Finisterre, in Gallicia, to the centre of Stadland, or the promontory of Stat in Norway. Vide Dumont, *Corp. Diplomatique,* tom. 7, part. 1, page 253.

(207) One of the most celebrated of the English historians, *David Hume*, confirms this maxim, in the first volume of his work, entitled *The History of Great Britain.* "They (the Dutch) openly "denied, however, the claim of dominion in the seas beyond the "friths, bays and shores; and it may be questioned, whether the "laws of nations, warrant any further pretensions."*

* These are the words used by Hume, in mentioning the attack made by the British fleet, under the Earl of Northumberland, on the Dutch herring-busses, in the year 1636. See his History, vol. vi. ch. 52.....T.

The opinion of Galliani, is the most reasonable.

Louis XIV. made his flag respected in every sea, and, sometimes, with too much severity.(208)

14. In this conflict of opposite opinions, I adopt that of *Galliani*, before hinted at by Hubner and Vattel, and more positively expressed by Bynkershoek. It is the only one which appears to be equitable, and adapted to the nature of things. In my view, it is the most just, and the only mean that can serve as a rule, to fix the extent of the territorial sea, always contested, and not yet decided, or, at least, not established as it ought to be, on the basis of a solemn treaty between maritime powers. Until they shall enter into a public convention on the subject, every thing must depend on arbitrary usage; and the strongest will give law to the weakest.

15. The most certain mode of fixing the extent of the territorial sea, adjacent to coasts not curved, is to limit it to the space passed over by a ball, shot from a cannon, or at the point, at which a bomb, thrown from a mortar, placed on the shore, may strike a vessel. This opinion appears conformable to the principles of universal law, by which all that

(208) The Spanish vice-admiral, Papachin, having refused to lower his flag, on meeting with the French squadron, was forced, after a bloody engagement, to capitulate. He, then, asked, what they wanted of him; Tourville, who commanded the French ships answered, " nothing but the salute,"—to which the Spaniard replied, " Was it necessary to shed so much blood for that."—Griffet. *Journ. histor. du regne de Louis XIV. page* 281.

The extent of the territorial sea should be fixed at three miles.

space is considered as territory, over which officers and magistrates can cause the orders of their government to be executed,(209) either by fear, or by the force confided to them. It would be reasonable, then, in my opinion, without inquiring whether the nation, in possession of the territory, has a castle, or battery, erected in the open sea, to determine, definitively, that the jurisdiction of the territorial sea shall extend no farther than three miles from the land, which is, without dispute, the greatest distance to which the force of gunpowder can carry a ball, or bomb.

16. The anonymous author of the poem, *Del Diritto della Natura*, lib. 5, expresses this idea in the following lines:

Tanta s'avanza in mar questo dominio,
Quant' esser può d'antemurale e guardia,
Findove può da terra in mar vibrandosi
Correr di cavo bronzo accesso fulmine.

Far as the sovereign can defend his sway,
Extends his empire o'er the wat'ry way;
The shot sent thundering to the liquid plain,
Assigns the limits of his just domain.

(209) Digest. lib. 50, tit. 16, l. 239, § 8, *De verb. signif. Territorium est universitas agrorum intra fines cujusque civitatis; quod ab eo dictum quidam aiunt, quod magistratus ejus loci, infra eos fines terrendi, id est, submovendi jus habet.* Bynkershoek, *De Dom. mar.* cap. 2, § 3 *et* 5, mentions an order given by the states-general, in 1671, to the commanders of ships, to salute, as they passed near places belonging to foreign princes, whenever they came within cannon-shot.

Rule adopted in several treaties;—modified in certain cases.

This distance is the one adopted by the empress of Russia, in the 2d article of her instructions to her cruisers, of the 13th December, 1787; by the grand duke of Tuscany, Pierre Leopold, in his regulation of the 1st August, 1778, article 1; by the republic of Genoa, in its manifesto of the 1st July, 1779, article 1, and by the republic of Venice, in its manifesto of the 9th September, 1779, art. 9.

17. It is already established among polished nations, that in places where the land, by its curve, forms a bay or a gulf, we must suppose a line to be drawn from one point of the inclosing land to the other, or along the small islands which extend beyond the head-lands of the bay, and that the whole of this bay, or gulf, is to be considered as territorial sea; even though the centre may be, in some places, at a greater distance than three miles from either shore.

18. Notwithstanding the conformity of this doctrine, with the rules derived from the domain of the sovereign of the main land, it appears to me, that it may be admitted as a principle, that when the question arises, as to the exercise of this right over the territorial sea, for the purpose of establishing imposts, or restraining the freedom of passage, in regard to foreign vessels, and to subject them to the visits of revenue officers, that then, it being a question relating to the execution of rigid laws, it should be agreed, for the benefit of commerce, to contract the extent of this sovereignty; but if, on the other hand,

Extent of territorial sea, enlarged in favour of neutrals.

a neutral power claims it, in order to obtain an asylum against hostilities, and against the respective cruisers of belligerents, it should then be regarded as a beneficial right, that ought to be favoured, and to which the greatest extension should be given. In this case, in which humanity calls for the utmost indulgence of the laws, in my opinion, the territorial sea ought to be extended, not only to three miles, as above stated, but to the distance of two leagues, as has been practised by some of the powers of Europe. This example of natural equity and moderation, has been taken for the basis of the treaty concluded in 1740, between the Porte and the king of Naples. It is there agreed, art. 16, that in all places belonging to either sovereign, to the distance at which ships may be discovered, and from which ships may discern the land,* neither party will permit vessels to be pursued or molested. May the more powerful and enlightened nations of Europe, one day adopt, for the good of mankind, so excellent a maxim, in time of war!(210)

* The ordinary extent of vision, must be here understood as a mean only of fixing on some certain distance, as ten or twenty miles; otherwise, the rule, as Bynkershoek observes, (*De Dom. mar.* cap. 11) would be too variable: For some men can discern objects at a greater distance than others, and much will depend on the position of the spectator.....T.

(210) M. Boucher, professor of commercial and maritime law, in the academy of legislation at Paris, in adopting this opinion, in his *Institutes of maritime law*, adds, very properly, at the end of the third chapter; " But, as in such case, every thing is to be " strictly decided, in determining this space by miles, as many

Disputes among Publicists, as to the extent of the empire of the sea.

ARTICLE III.

Of the opinions of Publicists, as to the extent of the empire of the Sea.

§ 1. THE question concerning the empire of the sea, has been warmly debated, ever since the modern nations of Europe began to visit foreign seas, and to make discoveries in every ocean. Most of the writers who have treated of this subject, have taken up the pen, merely to defend the interests of their respective countries; but transported by their zeal, it has become the apple of discord, and has led them to embrace different systems. Thus, among those nations, who appeared already possessed of the dominion of the sea, their writers contended for this empire with the greatest animosity.

2. Notwithstanding the solidity of the principles of universal reason, exhibited in the preceding pages, some celebrated controversies arose, at the beginning of the 17th century, concerning the empire of the sea. The leaders in these disputes, became divided into two opposite parties, the one maintaining the absolute liberty of the sea; the other contending that it might be subjected to the dominion of a particular nation.

" different calculations are given, as there are different states, " who, for the most part, have not the same certain measure. In " this case, nations ought to decide, by mutual consent, on the " immunity of their respective coasts, according to an invariable " standard; and the most exact one, is without doubt, that of the " quarter of the meridian, adopted by the French."

Grotius's work, Mare Liberum.

3. At the head of the first party, appeared Hugo Grotius, or Van Groot.(211) He published, in 1609, a work, entitled, *Mare liberum, sive de jure, quod Batavis competit ad Indiana commercia.* He had before written on the dominion of the sea, of shores, rivers, rocks, lakes, and had treated of some other questions on this subject, in the second book of his immortal work, *De Jure Belli ac Pacis.* This celebrated publicist, founded his opinion on principles and reasons which, though not generally adopted by his commentators, have the merit of originality, and are drawn from the human heart. Born in a republic, that sprung, as it were, from the ocean, from which it derived its greatness, this illustrious writer, in the work just cited, has considered the subject in the most extensive manner.

He has undertaken to prove, that neither Holland, nor any other nation, can be excluded from the navigation of the ocean, and from trading to the Indies; notwithstanding the claims of the Spaniards and Portuguese, who, relying on the donations of the popes, Alexander VI. and Nicholas V. and on prescrip-

(211) Hugo Grotius, was born at Delft, in Holland, the 10th April, 1583. He went to France, for the first time, with Olden-Barneveldt, ambassador of the states-general, in 1598. At the age of 24 years, he was made advocate-general, and in 1713, pensioner of Rotterdam, and deputy from that city, to the states of Holland, and West-Friesland. His connexion with the respectable Barneveldt, excited bitter persecutions against him. He died the 28th August, 1645, at 63 years of age.

tion, and usage, were determined to have the exclusive right of navigating the seas of Guinea, and of the Indies. Grotius begins, by inquiring, whether the sea is, in its nature, susceptible of sovereignty, and, transported by his patriotism, he maintains the negative. He supports his opinion, with great energy, and by very ingenious arguments, and he concludes, that it is contrary to every principle of justice and equity, to prohibit commerce, and that, at all times, in peace and war, and during a truce, the Dutch ought to enjoy the liberty of trading to the Indies. Strong in the principles displayed by this author, the Dutch asserted the freedom of navigation, and, that, consequently, it was lawful for them to fish in the English seas.(212)

4. John Selden,(213) an Englishman, put himself at the head of the opposite party. This learned lawyer, one of the most judicious writers of the 17th century, was regarded by Grotius himself, as an

(212) Grotius, was followed by other publicists, who, successively wrote, in favour of the liberty of the sea, on the principles he had established. The following are their names, and the titles of their works: Marcus Zuerius Boxornii, *Apologia pro navigationibus Hollandorum adversus Pontum Henterum.*—Theodori Graveri Amsterlodamenis, *Dissertatio de mari natura libero, pactis clauso.* Joan. Groeningii, *Navigatio libera.* Joaun. Isaaci Pontani, *Discussionum historicarum de mare libero adversus Joannis Seldini mare clausum.*

(213) John Selden, was born at Salvington, in the county of Sussex, the 16th December, 1584, and died at London, the 30th November, 1654.

honour to his country. He explained his opinions, in 1636, in his work, entitled, *Mare Clausum, seu de dominio maris.*(214) The English king was so satisfied with it, that by a decree of his council, he ordered a copy of it to be deposited in the archives of the tower; another copy in the exchequer, and a third in the court of admiralty, as a deposit of the most authentic proofs, and the most convincing arguments in support of the peculiar right of England over the British ocean.

5. This dispute was rendered famous by the celebrity of the men who took part in the controversy. Selden soon had for his partisans, Paul Sarpi,* Puffendorf,† Wolfius,‡, and Heineccius.‖ This war of

(214) Moreri is strangely mistaken, in saying, in his Dictionary, that Grotius composed his work, merely to refute the *Mare Clausum* of Selden. The fact is precisely the reverse, as appears from the priority of the work of Grotius, in which not a word is said of Selden, while the latter, in his work, makes a direct attack on Grotius.

* Peter Paul Sarpi, was born at Venice, in 1552, and died in 1653. He was a man of genius, and possessed various and extensive learning. His works were printed at Venice, in 1677, in six vols. 12mo.....T.

† Samuel Puffendorf, was born 1631, at Fletch, a small town in the Margravate of Misnia, in the Electorate of Saxony. He was governor to the son of the Swedish ambassador, at Copenhagen, and when the war broke out between Denmark and Sweden, he was detained a prisoner for eight months, during which time, he studied Grotius and Hobbes. Charles XI. king of Swe-

pens, soon gave place to that of arms. Selden, whom Grotius called *Thalassocraticus*, or ruler of the sea, maintained, that the empire of the British seas, belonged to the crown of England. His arguments are drawn from the holy scriptures, from the history of the most illustrious nations who had held the empire of the sea, from some parts of the sea being already, in fact, occupied, from prescription, from the common law of England, and its ancient titles, from treaties, in which other powers had acknowledged this dominion, from possession, and the uninterrupted exercise of her right, and, finally, from the example of other governments.

6. These arguments are contained in two books. In the first, he endeavours to prove, that the sea is not, by the law of nature and nations, common to all

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den, appointed him professor of law, and historiographer, and conferred on him the title of Baron. He died at Berlin, in 1694. The best edition of his great work, on the *law of nature, and nations*, is that of Barbeyrac, with his learned preface and notes, which was translated into English by Basil Kennet, 5th edition, folio, London, 1749.....T.

‡ John Wolfius, the son of a brewer, was born in 1679, at Breslau, the chief city of Silesia. He was appointed professor of law, in the celebrated university of Halle. His works are very voluminous; but possess great merit, though many of them are written in barbarous latin. He died in 1754.....T.

‖ John Gotleib Heineccius, was born in 1618, at Eisenberg, in the Electorate of Treves. He was professor of law, in the university of Halle. His works were printed at Geneva, in 1744, in 8 vols. 4to. and are deservedly held in high estimation.....T.

Respective merits of Selden and Grotius.

mankind; but, on the contrary, is susceptible of becoming the domain and property of a particular nation; in the second, that the king of England is absolute master of the British ocean, and that, consequently, the English have an exclusive property in the fisheries in that sea.(215)

7. These two celebrated publicists, impelled by the interests of their respective countries, and by the glory of being leaders of literary factions, so entangled the subject, by their passionate opinions, that instead of elucidating and deciding the question, they involved it, by their useless learning, and equivocal arguments, in greater obscurity. Posterity has decided, that Grotius maintained a good cause badly, and that Selden defended a very bad cause well.*

(215) Selden had, besides, for his partisans, the following writers: Conringii, *Dissertatio de imperio maris.* A dissertation by the same author, or according to some, by *John Werthosius, De maritimis commerciis.* Conr: Sam. Schurzfleischii, *Dissert. maris servitus.* Joannis Strauchii, *Dissert: de imperio maris.* Christ. Roehrensee, *De jure circa aquas majestatico.* Thomæ Rivii, *Historia navalis media.* Seraphin de Fretas, a Portuguese, followed the steps of Selden, and published against Grotius, a work entitled, *De iusto imperio Lusitanorum Asiatico adversus Grotii Mare Liberum.*

* The learned and judicious Bynkershoek, does justice to the profound erudition of Selden, but denies the force of his reasoning. "*Non est, cur Seldeno invidiamus splendida testimonia, quibus ille "ad tuendum Gentis suæ gloriam longe lateque superbit; apparatum "eruditionis agnosco ingentem, vim probandi non æque.*" De Dominio maris dissertatio, cap. v.....T.

8. Isaac Pontanus,* historian to the king of Denmark, in his *Historical Discussions*, is opposed, in many respects, to the opinion of Selden: he inquired, what is meant by a sea, free, or not free, open or inclosed, and how it ought to be considered in these different points of view; but he comes to no decision on the principal matter in controversy.

9. Julius Pacius,† a knight of St. Mark, a philosopher, and celebrated vicentine lawyer, wrote on the liberty of the Adriatic sea, during the dispute between the king of Spain and the republic of Venice. After laying down some general principles, he reduces the question to three points: 1. Does the domain and jurisdiction of the Adriatic sea, belong to the republic of Venice? 2. By virtue of what right does it belong to her? 3. What are the effects of this sovereignty? He determines the first point, as might well be expected, in favour of the Venetians, on the authority of learned doctors; the second, by saying, that this sovereignty is founded on possession, supported by prescription; he explains the effects of this sovereignty, by shewing that it consists in jurisdiction, in the imposition of duties, the defence of navi-

* Isaac Pontanus, was born at Hærlem, in the province of Guelders, and died in 1640, at the age of 69. He published a great number of learned works.....T.

† Julius Pacius, born in 1550, at Vicenza, in Italy, was professor of law, at Padua. He died in 1635, at the advanced age of 85 years. His works on law are numerous, and considerably esteemed.....T.

Venetian advocates —James Godefroi.

gation, the protection of its subjects, and in the expulsion of pirates. He answered the objections which were made against his opinions, on behalf of his catholic majesty, in an anonymous discourse on the freedom of the Adriatic sea, but not in such a manner, as to induce him to suppose that he should remain without a reply.(216)

10. James Godefroi,* desirous of elucidating the 9th law of the digest, *Ad legem Rhodiam de jactu*, lib. 14, tit. 2. entered into some considerations on the sovereignty of the sea. His chief purpose is to

(216) The authors, who wrote in favour of the republic of Venice, were, Cornelius Frangipan, author of a work, entitled, *Allegazion in jure per la vittoria navale contro Frederico I. imperatore, ex alto del Papa Alessandro III. per il dominio della Republica Veneta del suo gulfo, contra alcune Scritture de'Napolitani.* Francis de Ingenuis, author of a letter, entitled, *De jurisdictione reipublicæ Venetæ in mare Adriaticum scripta ad Liberium Vicentium Batavum, contra Jo. Baptistam. Valenzolam Hispanum, et Laurientium Motinum romanum*, against which, a reply appeared in the work of Joh : August : de Berger, entitled, *Succincta commentatio de imperio maris Adriatici, Cæsari, qua regi Dalmatarum, ac principi Istriæ, ut et regi Neapoleos atque Siciliæ proprio.* Sarpi, on his side, published two works of very great boldness, but with little foundation in reason: The titles of them are, *Dominio del mare Adriatico della seren repubblica di Venezia descritto* da Fr : Paolo Sarpi dell'ordine de Seni. Teologa. The other, *Dominio del mare adriatico e sue ragioni per il jus belli della serenissima repubblica di Venezia* del padre Paolo Sarpi.

* James Godefroi, a native of Geneva, was a man of profound and accurate erudition. He died in 1652, at the age of sixty-two years.....T.

Disputes concerning maritime rights, between Denmark and Poland.

discuss the rescript of the emperor Antoninus, contained in that law; but he does not decide the question, which he handles cursorily, and in a scholastic manner.

11. The Baltic sea gave birth to controversies of the same nature, between the powers of the north. The king of Poland, in 1637, wished to subject the inhabitants of Dantzic to a new tax, and appointed a collector, and some vessels, for that purpose. The king of Denmark, who thought his rights infringed, seized the vessels, which were afterwards restored; but, on condition, that it should not, in any manner, derogate from his sovereignty, or the prerogative of his kingdom. Poland, not willing to abandon her enterprise, made every effort to levy a new impost. This claim gave rise to the question, whether such a thing could lawfully be done. An anonymous Polish writer maintained the affirmative, in a discourse addressed to a friend. The contrary opinion was held by an anonymous Danish writer, in a small volume, entitled, *Mare Balticum.* Another Pole, perhaps the same anonymous writer just mentioned, published the *Antimare Balticum;* each party exerted himself to the utmost of his ability, in defence of the rights of his sovereign. Though the arguments of the Dane appear more solid than those of the Polish writer, yet both of them are susceptible of refutation.

Ferdinand II. confers on Wallenstein, the title of general of the Baltic &c.

12. The emperor, Ferdinand II. in granting to duke Wallenstein,* the dutchy of Mecklenberg, conferred on him also, the title of general of the Baltic sea, and the Ocean. The king of Denmark complained of this in 1628; and the king of Sweden went so far as to say, that the protection of that sea belonged to him alone. Such was the origin of the war in Germany, by Gustavus Adolphus.† He de-

* This extraordinary character, was a private gentleman of Bohemia, devoted to the interests of the house of Austria, and for his successful services in the wars against the Turks, Venetians, and Bohemians, the emperor created him count of Fridlan, and, afterwards, duke of Mecklenberg. He conferred on him immense estates, which had been confiscated in Bohemia, by which he was enabled to raise, and maintain, an army of 50,000 men, at his own expense. In splendour, and sumptuousness of living, he surpassed all the princes and nobles of the empire. He was a military adventurer, ambitious, haughty and capricious.....T.

† From the manner in which this is expressed by our author, the reader would naturally conclude, that the vanity of Wallenstein alone, provoked Gustavus to a declaration of hostilities, and that the sole motive of the king of Sweden, for entering into this war, was to strip the imperial general of an empty title; a motive unworthy of that great monarch. Many other, and more powerful inducements to war, already existed in the mind of Gustavus. He had listened, with compassionate attention, to the complaints of the protestants against the emperor; he had promised them his protection and aid, and offered his kingdom as an asylum to the persecuted. The rapid successes of the imperial generals against the protestant princes; the situation of the Hanseatic, and other Baltic towns, menaced by the daring Wallenstein, were enough to alarm Sweden and Denmark for the safety and independence of their own dominions, and to induce them to think of checking the fur-

clared hostilities against the emperor, in order to compel him to suppress the title of general of the sea, which he supposed injurious to him. Balthazar Henkel maintained the justice of this war, in a work entitled, *De belli pretextione Gustavi Adolphi.* The author justifies the declaration of war, by the king of Sweden, and enters into an examination of the subject, without forgetting any thing which may favour his opinion. If such a dispute were to be decided, by the pieces produced on both sides, the decision would certainly be in favour of the king of Sweden, for the arguments alledged by his defenders, produce complete conviction, and entirely refute the reasons offered by the advocates of the emperor.

13. Bynkershoek has left us a very learned dissertation on the empire of the sea. It is divided into nine chapters, and is worthy of the reputation of the author. He maintains, however, a singular opinion, defending, at the same time, both the liberty and the sovereignty of the sea. He affirms that the sea may be made subject to dominion; but he asserts, that

ther progress of that victorious general. The ambassadors sent by Gustavus to represent him in the congress at Lubeck, were refused admittance with the most insulting contempt, through the influence, as he had reason to believe, of the emperor and Wallenstein. All these provocations, combined with his attachment to the protestant cause, and his desire to repress the alarming ambition of Ferdinand, were, to such a character as that of Gustavus, sufficient motives to commence open hostilities, and to carry the terror of his arms into the heart of the German empire.....T.

there is not an instance, at the present day, of its being subject to any sovereign, where the surrounding territory did not at the same time, belong to him. It appears, that Bynkershoek borrowed this opinion from George Paul Roetenbeck, who published, before him, a work, entitled, *Dissertatio, an mare dominii, sive imperii sit capax.*

14. Theodore Granswinckel* wrote in favour of the liberty of the sea, against Peter Baptist Burgo, who, by strange principles, and feeble arguments, maintained the sovereignty of the Ligurian sea, in favour of the republic of Genoa, in a work entitled, *De Dominio Serensis. Genuensis Reipublicæ in Mare Ligustico, lib. duo.* The former author replied to him in a work entitled, *Vindiciæ adversus Petrum Baptistum Burgum Ligustici maris dominii assertorem;* he published, also, a short time afterwards, a second work, under the title of *Vindicatio maris liberi adversus Guill. Welwoodum Britannici maris dominii assertorem.* These two performances are written with great animosity. They take from the Genoese, every hope of reclaiming their pretended empire over a great part of the Mediterranean sea, and from the English, that of the British ocean, so vainly arrogated by them.

* Theodore Granswinckel, born at Delft, in Holland, was the kinsman and intimate friend of Grotius. He died in 1666, at the age of 66 years.,....T.

Dissertation *De dominio maris*, by John Strauchius.

15. John Strauchius, in a dissertation, entitled *De imperio maris*, has attempted, in the first chapter, to demonstrate, that there is nothing in the nature of the sea, repugnant to the idea of property; and in the second chapter, he maintains that it is morally susceptible of perfect dominion. In the third chapter, he describes the empire of the sea, as assumed by the Romans; and in the fourth, the manner of acquiring this sovereignty, by imitating the division of the world made by Noah, that is, by the possession of the first occupant, by accession, and by prescription. In the fifth chapter, he examines the means of preserving this sovereignty, as by naval armaments and tribunals. He treats, in the sixth chapter, of imperative acts, such as lowering the flags by foreign ships, in form of obeisance, of impositions, of impressments, of the right of anchorage in ports. He pursues the same subject in the seventh chapter, where he speaks of the imposition of taxes and duties. In the eighth chapter, among the incidents of the sovereignty of the sea, he ranks, the power of prohibiting a passage to strange vessels; and, in the ninth chapter, he treats of the punishment of crimes, the pursuit of pirates, and the seizure of contraband goods. This author, who has blindly copied the doctrine of Selden, finished his dissertation, without perceiving that the rights, before discussed, belonging to all the powers of the world, over their respective territorial seas, though universally allowed to be legitimate, are not sufficient to establish dominion and property in regard to the high sea. So that it may be said, he has laboured

Galliani's work on the rights of neutrals.

in vain, to determine a matter not brought into question. On the other side, GEORGE JAMES LEICHERRI, his contemporary, has published a work, equally destitute of utility, entitled *Commentatio de jure maritimo.*

16. The Abbe GALLIANI, a Neapolitan, is the last of the writers on public law, who has treated of this subject; and he is the first, if I am not mistaken, to follow those principles of natural law, already laid down, in the preceding articles, I. and II. of this work, and to deduce from them, an inference which ought to be universally adopted.

17. This celebrated author, in his work, entitled *Dei Doveri de' Principi de Neutrali*, lib. 1, ch. 10, § 1. supposes five essential points of difference, between journeys by land, and voyages by sea. Reasoning on these differences, he thence concludes, with great clearness, that nations can occupy, and become the proprietors of the different regions of the earth, since it is in their power to secure this possession by defending the passes of mountains, and the mouths of rivers; the rest of the country, being naturally defended by rocks, valleys, rivers, forests, morasses, the borders of the ocean, and deserts. But not being able to surround, nor strictly to defend the open sea, since no solid work can be erected on that element, it is impossible to guard it, and consequently it is by nature incapable of being occupied. From opposite reasons, he concludes,

that when the shores of a sea belong to a single nation, and inclose an expanse of water, large or small, which has no communication with the rest of the ocean, or communicates only by a narrow strait, this part of the sea may be lawfully possessed, since it may be occupied, inclosed, and defended. But when the parts of the shore, which encompass this sea, thus circumscribed, belong to different independent nations, it is obvious that there is no reason, nor pretext for the nation, who possesses the land forming the straits, or out-let of this sea, to refuse, a passage, and free navigation within, to unarmed vessels; because, as this nation receives no damage, loss or inconvenience, from the passage of vessels, it cannot reasonably refuse to others an enjoyment advantageous to them, and in no degree injurious to those who may wish to prevent it. (208) It appears, also, that the possessor of the shores, which form the mouth of the gulf, or inclosed sea, may, justly, insist on the right of visiting the ships that pass the strait; and, as a matter of wise precaution, may prohibit the passage of armed vessels, when, from their number, and other circumstances, there is room for distrust, or just ground of suspicion.

(208) *Illud certum est etiam qui mare occupaverit navigationem impedire non posse inermem et innoxiam.* Grotius, *De jure belli ac pacis*, lib. 2, cap. 3, § 12.

CHAPTER III.

OF THE EFFECTS OF THE EMPIRE OF THE SEA.

ART. I.

Of Property in territorial Seas, and of their Dependencies

§ 1. WHEN a nation takes possession of an unoccupied country, it may justly be considered as having acquired, besides the property of the soil, the dominion and sovereignty. Being thus free and independent, its only aim will be to prevent every other nation from assuming the right of command, or exercising any acts of sovereignty whatever, within the space over which its empire extends, and which forms its territorial jurisdiction.*

2. A nation that occupies a part of the adjacent sea, has the sovereignty as well as the dominion of it, and enjoys there all those rights which appertain

* Vattel, lib. 1, ch. 18.....T.

to it on land, and which are given to it by the laws of the state.(217)

3. It follows from this fundamental principle, that the empire of the sea, according to the system established in the preceding chapter, is not to be regarded as a vain jurisdictional right, or as a mere honorary title, according to the exaggerated expression of GROTIUS ;(218) but has the real effects of every other kind of property. It differs in nothing from that of the land, and, consequently, gives us the entire disposal of the thing possessed, and the right of selling, exchanging, granting, and alienating it at pleasure;(219)* provided, that the possessor transfers no

(217) *Quoniam partes maris occupati ad territorium illius gentis pertinent, quæ eas occupavit, quale jus Rector civitatis in suo territorio habet, tale etiam ipsi competit in partibus maris occupatis; et per consequens qui iis versantur, iisdem legibus subsunt, quam qui in terris habitant aut commorantur, etiam peregrini admissi.* Wolfius, *Jus. Nat. et Gen.* cap. 5.....See Grotius, *De jure belli ac pacis,* lib. 2, cap. 3, § 8 and 13.

(218) Grotius, *De jur. bel. ac pac.* lib. 2, cap. 3, n. 13.

(219) Ferret, *de re navali,* tit. *de nautica* n. 1, *et* 23. Perigrin. *De jure fisci,* lib. 8, n. 9 et sequ. Binkershoek, *de Dom. Mar. cap.* 4. *Unum eundemque principem maris renuncio et vere dominium; simulque et hanc potestatem tribuo, qualem optimum maximam jurisconsulti solent adscriberi dominio. Itaque ut quisque rei suæ liber est moderator, et arbiter, ita dominus maris poterit id ipsum vendere, permutare donare, in solutum dare, aliisque modis ex animi sententia de eo statuere.*

* See also Barbeyrac's note on Grotius, lib. 2, ch. 3, § 13, who agrees with Bynkershoek, in rejecting the distinction of Grotius, between jurisdiction and property, in regard to the sea.....T.

greater right than belongs to him; that is to say, that those who derive title from him, shall preserve their property no longer than while they continue in possession.(220.)

4. The occupation of a portion of the sea, draws after it that of the coasts, roads, ports, and adjacent islands. But if different nations possess lands along the shore of a strait, or gulf, the empire of each must extend to the middle of the water, at an equal distance from every part of their respective and opposite shores; unless they have agreed to enjoy that space of sea, in common, and undivided, and, by their united power, to protect their mutual rights against strangers.(221)

5. The same principle may be applied, with greater force, to the dominion of bays, straits, and harbours, as more susceptible of occupancy, and as involving more the security of a country. Besides, bays, and straits of small extent only, are here intended, and not those large arms of the sea, which are often denominated such; as Hudson's Bay, and the Straits of Magellan, over the whole of which, the right of empire, and much less, the right of property, cannot be claimed.

(220) Grotius, *loc. cit.* § 12. Gronovius, *in commen.*

(221) Puffendorf *de jure nat. et gent.* lib. 4, ch. 5, § 8. Selden, *Mare Clausum*, lib. 2, cap. 20.

Extravagant claims to the British seas, advanced by Selden.

6. The celebrated Selden, in spite of these obvious principles, concludes his book on the empire of the sea, by the bold assertion, that the very coasts and harbours of the neighbouring states, situated on the other side of the British seas, are the limits of the maritime empire of the English to the south and to the east. But more modern, and more candid writers, have abandoned these extravagant and antiquated notions. In the disputes that arose, in 1636, between Charles I. king of England, and the states-general of the United Provinces, relative to the herring fishery, in the British seas, the latter denied this pretended empire of the English, which, they observed, could exist only in their own bays and gulfs, or on their own shores. The celebrated philosopher and historian, David Hume, agrees with them in opinion: "It may be questioned," says he, "whether the laws of nations warrant any further "pretensions."(222)

ARTICLE II.

Of Straits, and the Duties imposed on their Passage.

§ 1. WHEN maritime straits are so situated, as to form a necessary communication between two seas, the navigation of which is common to all, or to most nations, the power in possession of the straits, can-

(222) History of England, vol. 6, p. 306, 8vo. ed. 1791.

Right of passing straits ;—Duties may be imposed on it.

not refuse a passage to others; provided the permission is used with moderation, and is attended with no injury. By denying a passage, without just cause, the first nation would deprive others of an advantage, derived from nature; since the right of sailing from one sea to another is a part of the common possession of that element, which belongs to mankind, in its full extent.

2. The care of his own safety and preservation, alone authorises the sovereign of a strait to make use of particular precautions, or to require the observance of certain formalities, authorised by the usage of different nations. He may, for this reason, impose moderate duties on the passage of ships, either on account of the inconvenience which they occasion, by obliging him to guard his territory, or for the sake of the protection afforded against enemies and pirates, and for the expenses incurred in maintaining light-houses, pilots, and signals, for their security.

3. In Exodus, and the prophecy of Isaiah, mention is made of beacons, or signals, established for the safety and convenience of navigation, and thanks are given to God as the author of this good, and of all others which men enjoy.(223) This custom according to *Apuleius*, is very ancient. It is supposed to have been practised by the Arabians, and other nations

(223) Exodus, ch. 13, v. 21, and last chapter. Isaiah, ch. 4, v. 5.

Duties for the support of light-houses, as lawful as tolls on land.

of Asia, in the time of the expedition of Alexander the Great.(224) It existed, also, among the Romans, according to the testimony of Livy, and other historians.(225) It was by aid of these signals, that Belisarius, general of the armies of Justinian, defeated the Vandals in Africa.(226) Grotius cites them, as an example of the difference between those expenses, incurred by princes, who are masters of the sea, for the benefit of others, and those which they incur for their own private advantage.(227) From the utility of these establishments, Baldus* maintains, that maritime tolls are as lawful, as tolls imposed on land,

(224) Apuleius, *de mund.* Quint. Curt. lib. 5.

(225) Livy, lib. 2, *et* 8, *decad.* 3. Cæsar *Comment.* lib. 2, *et* 3. Vegetius, *De re milit.* lib. 3, ch. 5.

(226) Aimonius Monachus, *De gest. Franc.* lib. 2, cap. 6.

(227) Grotius, *De jure belli ac pacis,* lib. 2, cap. 3, § 14. *Quare nec contra jus naturæ, aut gentium faciet, qui recepto in se onere tuendæ navigationis, juvandæ per ignes nocturnos, et brevium signa, vectigal æquum imposuerint navigantibus, quale fuit Romanum vectigal, Erythræum ob sumtus exercitus maritimi adversus piraticas excursiones et quod in Porto Bizantini exigebant* Διαγωγιον *et quod jam olim Athenienses occupata Chrysopoli exegerant in ponto eodem, memorante utrumque Polybio; et quod in Hellesponto olim Athenienses eosdem exegisse ostendit Demosthenes in Leptinem; suo autem tempore Romanos Imperatores in arcana historia memorat Procopius.*

* Baldus was a professor of law at Padua, and, afterwards, at Pavia, in the 14th century, and died about the year 1400. He was the pupil and rival of Bartolus. His works, but little read, are contained in 3 vols. folio.....T.

Sound duties imposed by Denmark, on the passing into the Baltic.

for the passage of rivers, bridges, roads, and in other cases of a similar nature.(228)

4. Some modern powers have established duties of this kind.(229) Denmark, in particular, has imposed a tax on the passage of Elsineur, or Elsingeor, on all vessels going in, or out of, the Baltic sea, through the sound,(230) between Zealand and Sca-

(228) Bald. tit. *De Rer. divis.* col. 2, vers. *Numquid ibi. Vectigalia maritima sunt aquissima, quoniam ad tuitionem maris, et veram in eo securitatem præstandam constituta reperiuntur, quæ sane ingentem sumptuum molem exigit : quorum sublavamen quia porrigant illi qui securitate fruuntur, quis negare ausit ? Vid. de Afflict. ad cap.* 88, *Verb. Vectigal.* n. 101, *et* Cacher. *Decis. Pede. decis.* 154, *per tot.*

(229) The dukes of Savoy, in quality of counts of Nice, received a duty which they called *de Ville-Franche,* on all ships passing by that port, at the distance of eighteen miles. The princes of Monaco imposed a similar duty.

(230) The Sound is the famous strait between the island of Zealand, which makes part of Denmark, and the main land of Schonen, belonging to Sweden. On the Danish side, is the town of Elsineur, with the fortress of Cronenburgh, near which is a tolerably good road for ships. On the Swedish side, is the town of Helsinbourg, with a castle in ruins. Vessels trading to the Baltic, pass and repass, between these two places ; and it forms the proper passage into that sea. Though the great and little Belt, are also passages leading into the Baltic, yet they are little frequented. The little Belt is not deep enough, and the great Belt is filled with rocks and shoals, just covered by the water, so that vessels run great risk in passing through it ; the Sound is very deep, though it is not more than half a mile wide, near Connemburgh, and the objects on either shore, may be clearly distinguished. Great care has been taken to place lights on all parts of the coast, where there is the

nia, in proportion to the burden of the ships, and the value of the goods on board. The Danes, to whom the latter province formerly belonged, and who, consequently, were masters of both shores, have taken care, though they have since lost the province, to preserve the possession of the toll, which now constitutes a considerable branch of their public revenue.

5. This right was originally, in part founded on an agreement made between the first navigators who passed this Sound, and the sovereigns of Denmark, who undertook to establish in the Categat, light-houses and other signals, to serve as guides to ships, and to guard them against accident, and for which each vessel was obliged to pay a certain duty. In the lapse of time, new duties have been imposed on goods, which have been ratified, and acknowledged as lawful, by subsequent treaties with other nations.

6. Henry VI. king of England, in 1450, made a treaty with Christian, king of Denmark. Afterwards, by a second treaty between Henry VII. and king John, concluded in 1490, the two nations mutually granted to each other, entire freedom of commerce, by land and sea, in their respective states,

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least danger. Other beacons, when lighted, serve to guide vessels in dark and stormy nights. In short, every precaution has been taken to render this passage as safe as possible.

on paying the customary duties, excepting in cases of stranding and shipwreck. Those who wish to enter the Baltic, are bound to pay the Sound duties, and to pass always through the Strait, and not by the two Belts, unless when forced to do so by stress of weather: in such case, on proving the truth of the fact by the oath of the captain, or of two seamen, they must pay the same duty at the custom-house at Nyburg. The English made a third treaty with Denmark in 1670, in consequence of which they are, particularly as to the Sound duties, placed among the number of the most favoured nations.

7. In 1533, during the interregnum of the queen regent of the Low Countries, the first treaty was made between Holland and Denmark, relative to the Sound duties. At the peace of Spires, concluded in 1543, between the emperor Charles V. and Christian III. the latter engaged not to demand from the Dutch, Flemings, and the inhabitants of the Low Countries, a greater Sound duty, than a *rose-noble** for each ship.

8. In 1645, the Sound duties were fixed by a permanent regulation; and a treaty was concluded the same year, in relation to this object, at Christianpole, a small Swedish town, then belonging to Den-

* A piece of gold coin, of the value of 6s. 8d. sterling, or one dollar and forty-eight cents.

Nations favoured by Denmark, as to Sound duties.

mark, between that kingdom and the states-general of the United Provinces. To this treaty was subjoined a tarif of the duties to be paid by ships and goods passing the Sound, on entering, or coming out of the Baltic. This treaty, and the tarif, have served as the basis of other stipulations of the same kind, since made with England, and France, in 1770. At the present day this tarif is the only one used, in the custom-houses of the Sound, for the ships and goods of all nations.

9. In 1663, was concluded the first treaty between France and Denmark, relative to the duties of the Sound. This treaty was renewed in 1742. Since that period, the French have been considered as one of the most favoured nations in regard to this passage. This title of favoured nation is of so little advantage to those who are distinguished by it, that it excites no jealousy in those who are not among the number. It consists in this, that the most favoured nations pay one per cent. duty on goods, not comprised in the tarif, while others pay one and a quarter per cent. Among the former are included the English, Dutch, French, Swedes, Spaniards, Portuguese, Russians, Neapolitans, and the city of Hamburg on the Elbe.

Duties of masters of vessels on entering ports.

ARTICLE III.

Of Ports, Bays, and Gulfs.

§ 1. THE navigation of seas renders necessary the use of ports; as flowing from the law of nations, it is a public use; every ship, for this reason, may approach, and cast anchor in any port, provided, it be furnished with the necessary papers to prove that it belongs to a friendly nation. But, as a consequence of the empire of the territorial sea, every port must be considered, as belonging to the state within which it is situated, and, therefore, subject to the jurisdiction of the ruling power.(231)

2. Whenever a ship enters a port, the master is bound to conform to the usages and regulations which are there established, to take his station in the customary places, where other vessels of the same nature and burden are stationed, and at the distances prescribed, to obey the instructions he may receive from the harbour-masters for that purpose; and, finally, to pay all duties and charges that are there imposed.(232.)

(231) Instit. lib. 2, tit. 1, § 2. *De Rer. divis.* Dig. lib. 1, tit. 8, l. 4, § 1. eod. Feudor. lib 2, cap. *unic. Quæ sint regal.* Richeri *in cod.* lib. 2, tit. 1, *defin.* 2. Loccenius, *De jure maritimo,* lib. 1, cap. 8, § 2, 3, *et* 4.

(232) Cod. lib. 12, tit. 45, *De Littor. et itiner. custodia.* Consolato del mare, cap. 199, 200, *et* 224. Cujac. *ad tit. cod. de vectigal. et comm.* Loccenius, *De jure marit.* lib. 1, cap. 8, § 4, 5, *et sequ.*

Duties relative to ports, applicable to bays and gulfs.

3. These obligations relative to ports, are of equal force in bays and gulfs, inasmuch, as they also make a part of the sovereignty of the state, within whose dominion and territory they are situated, and are equally placed under its safeguard and protection; consequently, the asylum afforded in a bay, or gulf, is no less inviolable, than in a port, and every breach of jurisdiction, committed in the one, as well as in the other, must be considered as an open violation of the law of nations.(233)

(233) Hubner,* *De la saisie des bâtimens neutres*, tom. 1, ch. 8, § 10. Valin. *Comment à l'ordon. de France*, liv. 4, art. 1, tit. *Des Rades.*

* Hubner expresses himself very pointedly on this subject. "In fact," says he, "an independent nation is not obliged to render any account to another of what passes within its own jurisdictions; unless it has, in certain respects, so far tied itself down by formal treaties. Much less is it obliged to permit strangers, who, under any pretext whatever, enter its ports or bays, or come within reach of cannon-shot, to visit its vessels. The sovereignty of the place forbids even the ships of war, or privateers of belligerents, from visiting or capturing the vessels of their enemies, within such neutral territory; for a much stronger reason, ought they to refrain from any act of this kind in regard to neutral vessels. Such belligerent vessels are themselves subject to the temporary jurisdiction of the sovereign of the place; so far at least, as the security of its citizens, the tranquillity of the state, and the general laws of society require. If the commander of a belligerent vessel should so far forget himself, as to exercise any act of authority, jurisdiction, or hostility, towards other vessels within such neutral territory, he can only blame himself, if treated, prosecuted, and punished, as a disturber of the public repose, and a violator of the supreme authority of the sovereign of the country. The latter has full right to proceed in this manner. If he does not choose, on some occasions, to exercise this right, but contents himself with complaining to the sovereign of such offenders, of their acts of violence, it is an attention on his part, which the other ought to take kindly, and be the more ready to give him the fullest satisfaction."....T.

Of various maritime duties.

ARTICLE IV.

Of other Maritime Duties, and of Anchorage Duty.

§ 1. MARITIME nations have, also, a right to impose such contributions, and imposts, on the territorial sea, as they may judge necessary to defray all the charges and expenses, which the public security, and the convenience of navigation, require. For this reason, when, for the purpose of rendering navigation secure,. and to aid mariners, light-houses, *buoys* placed to point out sand-banks, and companies of coast-pilots, are supported, a reasonable toll may be levied on all vessels, without any infraction of natural law, or the law of nations, like that, formerly exacted by the Romans in the Red Sea, to reimburse the expenses of the naval force, which they maintained against the pirates.(234) The Byzantines made the vessels that entered the Euxine, pay a small duty,(235) as did the Athe-

(234) Pliny, *Histor. natural.* lib. 6, cap. 22, speaks of a certain Annius Plocanus, who had farmed the toll of the Red sea: *Id accidit hoc modo; Annii Plocanii qui maris Rubri vectigal a fisco redemerat libertas circa Arabiam navigans,*" &c. And in the following chapter, where he treats of the navigation in the Indies, he says, that on account of pirates, they embarked companies of archers on board of their vessels, which sailed every year. *Donec compendia invenit mercator lucroque India admota est. Quippe omnibus annis navigatur saggitariorum cohortibus impositis; et enim piratæ maxime infestant.*

(235) *Herodian,* lib. 3, cap. 1, n. 11. *Procopius,* cap. 25.

nians,(236) formerly, in the same sea, when they were masters of Chrysopolis, opposite Byzantium. The Athenians also, levied a tribute in the Hellespont ;(237) the Romans did the same, in the time of Procopius,(238) and it is the practice, at the present day, among most of the powers of Europe.(239)

2. This has given rise to the duty on anchorage, the power of pressing vessels for a particular service,* and of detaining vessels anchored in ports and roads.

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(236) *Polybius*, lib. 4, cap. 44.

(237) *Xenophon, Græc. Hist.* lib. 4, cap. 8, § 27 *et* 31.

(238) *Procopius, in arcana* hist. cap. 25.

(239) Dig. lib. 39, tit. 4, l. 10, *De publican. et vect.* Chacheran. *Decis.* 155, n. 3. Zuarius, *De usu maris*, cons. 1. Stypmannus, *Jus marit. Hanseat.* par. 1, cap. 5. Loccenius, *De jur. mar.* lib. 1, cap. 4, n. 6. Casaregis, *De Comm.* Disc. 136, n. 1. Heinecc. *in Prælect. Acad. ad Grot.* lib. 2, cap. 3, § 14. *Primus effectus est jus imponendi vectigalia: cujus juris æquitatem Grotius suo more probat ex eo quod dentur in compensationem impensarum factarum a republica ex moribus et consensu gentium. Ostendit, enim et Romanos, et Byzantinos, et Athenienses exegisse a navigantibus vectigalia.*

* *La faculté d'user des angaries.*—The French word, *angarie*, is taken from the Greek ; (see the next article) among the Persians, *angarus* was a royal messenger, employed for the speedy conveyance of public dispatches, and had the power of pressing horses, carriages, and men, for this service ; and among the Greeks and Romans, *angara*, inns or post-houses, appear to have been establish-

Anchorage duty on ships.

3. Anchorage-money is a duty collected from a foreign ship, when, for greater safety, it is desirous of casting anchor, and of continuing in a port or road. Justice, however, requires, and it is the general practice, that when a ship departs from a port, where it has paid anchorage-duty, and is compelled, by any accident, to return, without having touched at any other place, not to exact another payment of this duty.(240) For the same reason, whenever a ship enters a port, from necessity, or on her way, she is not bound to pay the established duties, except those of anchorage, which she must pay, though no goods are unladen, nor any sale made.(241)

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ed along the road for that purpose. The word frequently occurs in the Digest and Code, and signifies any *forced service*. *Angariari est cogi*. Gregorius, 8. Epist. 14. *Angariari id est cogere, verbum Persicum*. Suidas. See note to law 4, Dig. 49, tit. 18. By the Roman law, no person was excused from contributing to this service, either on account of his civil dignity, or his religious profession. *Neminem ab angariis, vel parangariis, vel plaustris, vel quolibet munere excusare precipimus, cum ad felicissimum expeditionem nostri numinis omnium Provincialium per loca, qua iter arripimus, debeant solita nobis ministeria exhiberi, licet ad sacrosanctas Ecclesius possessiones pertineant*. Code, lib. 1, tit. 11, leg. 2. The word, as used in modern times, is confined to the pressing of ships.....T.

(240) Dig. lib. 39, tit. 4, leg. 15, *De publi. et vectig.* Targa, *Pond. mar. cap.* 72. Casaregis, *De Com. disc.* 10.

(241) Dig. lib. 39, tit. 4, leg. 15, § 8. *De publi. et vectig.* Loccenius, *de jure maritimo*, lib. 1, cap. 8 *et* 9. Casaregis, *de Comm. disc.* 10.

ARTICLE V.

*Of the Pressing of Ships.**

§ 1. BY the impressment of ships,(242) (which is one of the prerogatives of supreme power) is meant the exaction of certain services and duties, imposed by a sovereign on ships, riding in his ports and roads,

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* *Des Angaries.*

(242) *Angarie* is a word derived from the ancient language of the Persians, as Herodotus, lib. 8. Hesychius and Suidas, and afterwards Brisson, lib 2, *de regio person. principatu*, have remarked. After the Persians became masters of the east, this word, says Grotius, in his *Commentary on the fifth chapter of St. Matthew*, passed to the Hebrews, and from the latter to the Greeks. Among the ancient Greeks Αγγαρεία, was the same thing as δελεία, and signified the service, or work exacted from a person against his will. Among the more modern Greeks, Αγγαρεία is used for the passage itself, or act of transportation by a public road. Commentators have understood in this sense, the expression *Angariarum* and *Angariari*, of the law 4, Digest lib. 49, tit. 18, *de privileg. Veteranor.* and of the law 7, of Code, lib. 11, tit. 9. It is also sometimes expressed by the term *servire naves.* We find an example of this in the ancient inscription, mentioned by Gruterus, page 642, n. 2.

Sub. L. Aruntio. Stella
Navis. Harenaria. Qux
Servit. in Emilianis
Redemptore
Lelio. Mucio. Felice.†

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† See Loccenius, *jure maritimo*, lib. 1, cap. 5, § 2, from which the above is taken. The word in German and Belgic, is preſsen, in English, *to press.*

Pressing of ships is a royal prerogative.

in the time of some public expedition, for the transportation of soldiers, arms, and other warlike ammunition, for a certain reward.(243)

2. This right to press ships, is a royal prerogative which all sovereigns may exercise in cases of public necessity, or utility.* Though foreign vessels are thus obliged to perform the duties imposed by virtue of this right; yet it does not destroy the liberty of commerce and navigation, since it is temporary, and takes place only when necessity, or the public good requires it. But as it, in some degree, infringes this liberty, at least for a time, the exaction of this service may be guarded against by a convention to that effect. It is so stipulated in the 18th article of the treaty of 1753, between the king of Naples, and Holland, and in the 24th article of the treaty of 1787, between France and Russia.

3. No ship can be excused from these services, under the pretext of dignity or personal privilege; all foreign ships, belonging to other powers, are obliged to perform them, even, though they are

(243) Vinnius ad Peckium, *ad tit. Cod. de navibus non excusandis. Stypmannus, jur. maritim.* par. 5, cap. 1, n. 32. Loccenius *de jur. marit.* lib. 1, cap. 5, § 3. Code lib. 2. Feudor, *tit. quæ sint regaliæ.* Targa. *Ponderaz. marit.* cap. 73, who, in § 1, gives a most extraordinary origin to these *impresses.*

* Molloy, *de jure maritimo,* lib. 1, ch. 6, confines the exercise of the right to cases of extreme necessity: And he agrees with Loccenius, lib. 1, cap. 5.....T.

under an engagement to carry their cargoes elsewhere within a given time; they have the right only of requiring an indemnity.(244)

4. If the master of a foreign ship, finding himself thus circumstanced, endeavours to escape, that he may avoid this duty, or to retard the transportation of the articles to the destined place, or shall, in any manner whatever, raise difficulties prejudicial to the success of the expedition, his ship will be subject to confiscation, and his crew liable to punishment, proportioned to their breach of good faith.(245)

5. If the master, instead of proceeding to the place of destination, touch elsewhere, and there sell the cargo of provisions, or implements of war, it is usual to inflict on him the most rigorous punishment, even that of death; those who knowingly purchase the effects are equally exposed to the same

(244) Leg. 4, § 1, Dig. lib. 49, tit. 18, *De Veteranis.* Leg. 18, § 24. Leg. ult. § 22, et 23. Dig. lib. 50, tit. 4, *De Muner. et Honor.* Leg. 1 et 2, Cod. lib. 11, tit. 5, *De Navib. non excus. a leg. unic. Cod.* lib. 11. tit. 26, *De Naut.* Tyber. Sixtin. *de Regaliis.* lib. 2, cap. 23, n. 22. Selden, *Mare clausum.* lib. 2 cap. 20 Stypman. *Jus. Marit.* par. 5, cap. 1, n. 23, Loccenius, *loc. cit.* § 5, n. 23. *Angariarum onus etiam exteros afficit, ait Stypmannus, quod quotidiana confirmat praxis, cum hac tamen lege, ut sui laboris et officii digna, capiant præmia emolumentaque.*

(245) Leg. 1. Cod. lib. 11. tit. 3, *de nav. nonexcus.* Leg. 10, Cod. *de sacros. Eccles.* e leg. ult. Cod. lib. 11, tit. 9, *de Fabricensibus.*

Vessels pressed, if shipwrecked or captured.

penalties; at least, they are liable to a rigorous and extraordinary punishment, according to the exigency of the case.(246)

6. If any of the vessels happen to be shipwrecked, or taken by enemies or pirates, the sovereign is not bound to make reparation for the loss, these events being merely fortuitous,(247) provided, there is no imputation against the commander of the transports.(248) For the same reason the master cannot be prosecuted by the sovereign, if he should lose his cargo by shipwreck, or by any event of the like nature.(249) It would be unjust, also, to compel a ship to make more than one such voyage, or transportation.(250)

(246) Leg. 3 et 4. Cod. lib. 4, tit. 40, *Quæ iis vendi non poss.** Leg. 5, Cod. lib. 2, tit. 1, *de navicul.* Peckuis et Vinnius, ad Leg. 5.

(247) *Cum nemo ex facto alieno obligetur.* Leg. 23. dig. *de Regul. jur.*

(248) *Nisi princeps ipse, vel per suos damnum intulerit quia proprium factum intervenit.* Sixtin. *in loc. cit.*

(249) Loccenius, *in loc. cit.* cap. 7, § 11. Christineu. *decis.* 66, n. 2. *Et testatur ita judicatum a Senatu Brabantino.*

(250) Loccenius, *in loc. cit.*

* The 4th law of this title in the code, makes a distinction between the offenders: the more noble, and honourable were proscribed, and all their property confiscated; while persons of inferior rank, and low condition, were punished capitally. *Honestiores quidem stylum proscriptionis et omnium quorum amissionem incurrant; inferiores autem vilioresque personæ capitali supplicio subjaceant*.....T.

7. We must, however, carefully distinguish the impressment of ships, on account of a war, from that made for the transportation of goods on occasion of the discovery, or conquest of some region or island in the new world, or for other convoys of the same nature. It is certain, that if ships, pressed for other objects than a military expedition, suffer shipwreck, or are taken by enemies or pirates, the sovereign who ordered them on the voyage, ought to indemnify the owner for the loss, since it is unreasonable that any one should suffer from an expedition, intended solely to benefit another.(251)

ARTICLE VI.

Of Embargoes, or the Detention of friendly Ships.

§ 1. THE right of stopping or detaining the vessel of a friend, is derived from the same source as that of impressing ships. Embargo is an act by which a sovereign, or power, not an enemy, detains one or more vessels, lying in his ports, or in the roads of his dominions, or prohibits their departure, on occasion of some public necessity, and not on account of war. This detention is made upon the payment, to the vessels retained in such circumstances, of a reasonable freight, equal to what they might have otherwise earned; which is agreeable to the principles of

(251) Sixtinus *de Regaliis*, lib. 2, cap. 13. Loccenius, *in loc. cit.* ch. 5, § 9.

Inconvenience of embargoes, provided against in modern treaties.

equity and justice, and the universal practice of Europe. Detention differs wholly from capture; the one has for its object the appropriation of the thing taken; the other to retain it only for a necessary purpose, restoring it afterwards, or paying its value.(252)

2. Without repeating, in this place, all that Galliani, in his book before cited, has ventured to say, in order to prove the inconvenience and injustice of the practice, it may be observed, that as the right of detaining friendly ships shackled commerce, it was stipulated, for the first time, in the 18th article of the treaty, between the king of the two Sicilies, and Holland in 1753, that ships, their crews and cargoes, should not be detained by any general, or particular order, nor for any reason, or occasion whatever, not even under pretence of the safety, and preservation of the state. This convention appeared so prudent, that, in a short time, it was generally adopted, and has since been included in all subsequent treaties between the different powers of Europe.(253)

(252) Leg. 18, § 11, lib. 50, tit. 4, Dig. *De munerib. et honorib.* Leg. 1, lib. 11, tit. 3, Cod. *De navibus non excus.* Perezius, Corvinus et Peckius. Marquard. *De jure marit.* cap. 5, n. 38. *Guidon de la mer*, chap. 7, art. 6. chap. 9, art. 6 and 13. *Ordinance de la marine de France*, art. 1, tit. *Des lettres de marque.* See also the preceding article.

(253) Mably. *Droit public de l'Europe*, p. 301.

Strangers subject to the internal jurisdiction of territorial seas.

ARTICLE VII.

Of the internal Jurisdiction over territorial Seas.

§ 1. THE internal administration of justice exclusively belongs to the proprietor of the territorial sea, and the executive power, charged with the prevention of disorders, and the reparation of injuries, may there exercise its authority. The subjects of the sovereign are not the only persons amenable to this jurisdiction. It extends to strangers navigating within it, who are considered as temporary citizens, and members of the same political body.(254) For this reason, whenever the delinquents are private individuals, the tribunals commissioned for that purpose, inflict on them punishments, proportioned to their offences;(255) but if the persons guilty of these dis-

(254) *Tertia potestas illa (nempe jurisdictio Principis) extenditur quoque in advenas, qui fixum domicilium non habent, sed vel ad tempus, vel saltem transeunt, quia dum ibi sunt intra potestatis illius terminos sunt, eaque continentur. Quidquid autem interea temporis ab ipsis agitur id potestate quoque ejus, qui territorio præest, continentur; quia dum agunt v. g. contrahunt, delinquunt sub ea potestate sunt.* Henri. Coccei. *ad Grotium*, lib. 2, cap. 18, § 9. *Disp. de Fund. in territ. jurisdic. tit.* 2, n. 6. *Inter exercit*, n. 54. Vattel, *Droit des Gens*, liv. 2, ch. 8, § 163. See the first note to the first article.

(255) Heinec. in *Prelect. Acad. ad Grot.* lib. 2, cap. 3, § 12. *ad finem. Quemadmodum exteri, qui in territorio nostro navigant. Hinc nullum est dubium, quin puniri a Belgis possit qui in mari hoc australi piraticum exercuit, vel homicidium commisit, quamvis sit exterus.* Et ad finem § 15. *Nos addimus et invitis vicinis imperantem mari posse leges de usu navigationis præscribere.* Stypman. *de jure*

Violations of this jurisdiction may be punished.

orders, are nations or societies, they are chastised by the public armed force, until they give satisfaction for the offence, and make complete reparation for the injuries committed. Such is the origin of naval wars carried on against lawful powers, or unlawful, as pirates and corsairs, the disturbers of the public tranquillity, and against all those who interrupt the security of navigation, and the prosperity of commerce.(256)

2. From observing the rights of sovereignty, even that of inflicting the punishment of death, exercised by the commanders of ships of war, in ports and bays belonging to another power, some authors, and, among the number, HUBNER,(257) have pretended,

maritimo, par. 3, cap. 1, n. 19. *Sequitur potestas animadvertendi in facinorosos, quam connexam esse vult salvo conductui* Gilman, *et ex illa elicit jurisdictionem et cognoscendi super causis sive civilibus, sive criminalibus, si in littore inter vel illos ibi habitantes, aut aliter illuc accedentes oriantur, vel etiam in mari littori proximo, si simul cum littore ad certa spatia occupatum sit.*

(256) Authent. *Quæ in Provincia*, etc. Cod. *ubi de crimine agi oportet*. Loccenius, *de jure marit.* lib. 1, cap. 4 *et* 6, n. 4. Stypman. *ad jus marit.* par. 1, cap. 6, n. 381. ibid. " *Et quia regna non actionibus, sed armis vindicantur legiones assumendo, ubi leges deficiunt veniendum ad arma, ubi locum invenire justitia apud adversarium nequit. Nullum enim bellum justius, quam quod pro rebus repetendis suscipitur.*

(257) Hubner, *De la saisie des bâtimens de neutres*, speaking of the capture of a neutral vessel, lays down without any proof, the following theory, which is opposed to the principles above adopted. " Les vaisseaux neutres, sont, sans contredit, des lieux neu-

that such ships must be regarded as foreign territory; for this specious reason, that if the place occupied by the vessel continued to be the territory of the sovereign of the port, such acts of complete jurisdiction could not be exercised in his presence, and within his dominions.

3. It will be easy, to remove this difficulty, if we consider for a moment, that this act of jurisdiction, supposed to be done on board of a ship of war, is not founded on the right of territory; but upon the nature of the military command, exercised on board of her, which remains unimpaired, and in full force, whenever the sovereign of a port consents to admit a vessel of war, as such. Without this continuance of military power, it would be impossible to govern the ship's company, and maintain discipline on board. The exercise of this power in its fullest extent, on board of a ship of war, is, therefore, a necessary consequence of the asylum, granted to it, not the peculiar right of the commander of such ship, much less a territorial right.

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tres—puis qu'il revient au même d'enlever des effects d'un navire neutre, ou de les enlever d'un territoire neutre."* This argument is very illogical, as will be shewn in the second volume, when we come to speak of the effects of neutrality.

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* This position of Hubner, was advanced before him, by Mons. Michel, the Secretary of the Prussian embassy, on the subject of captures by the British in the war of 1745, and which produced the celebrated memorial and answer in 1752—3..... T.

The internal command of a foreign ship of war remains unimpaired.

4. Thus it follows, from the nature and quality of a ship of war, that the internal military command remains untouched: but that in every other respect, she and her company, are subject to the jurisdiction of the sovereign of the place. My opinion, on this point, is founded on the principle, generally received, that a foreign army, that passes through, or stops in the territory of another sovereign, remains subject to the jurisdiction of the country, though the military authority exists unimpaired in the hands of the commander, by virtue of the tacit consent of the sovereign himself, according to a principle of universal reason, that he who grants a right, or privilege, grants, also, all those necessary incidents and powers, without which it could not be exercised, or used.(248)

ARTICLE VIII.

Of Commerce and Fishing.

§ 1. ANOTHER consequence of the empire of the territorial sea, is the right of permitting or prohibiting commerce, or the residence of foreign merchants in the country, either by imposing duties on the importation or exportation of goods, allowed to

(248) Henric. Coccei. *Disput. de Fund. in territ. pot.* tit. 2, n. 14. *Eadem potestas extenditur quoque ad exercitus peregrinos eorumque duces.* Knich. *De jure territ.* cap. 4, n. 4. Vattel, *Droit des Gens,* liv. 2, chap. 8, § 103. Puffen. *de jure nat. et gent.* lib. 3, cap. 3, § 10.

be imported and exported, or by inflicting punishments on those who who import or export prohibited goods.(259)

2. It will, perhaps, be objected, that if you admit the sovereignty of the sea, in regard to fishing, it is not allowable to restrain the freedom of navigation; since, as has been shewn in the first chapter, it is common to all mankind, and inexhaustible in its use.

3. But it may be answered, first, that even the liberty of fishing, could not be allowed without the power of excluding navigators from the places already occupied; and in the second place, highways may be considered as inexhaustible in their use, as the sea; yet they are subject to the laws of the

(259) Heineccius, *de navibus ob vecturam vetit. merc. commiss.* Exercit. 8, § 4, ibid. *Interest sane reipublicæ ne promiscue omnibus negotiandi licentia detur. Interest, ut jam Aristoteles Polit. lib. 7, cap. 6. Monuit legibus definire, quibuscum communicare cives oporteat, cum quibus non oporteat. Interest, ne exteri commerciorum obtentu cives divitiis spolient, luxu aliisque vitiis ac probis inficiant rempublicam, seque vel ipsos, vel hostes rebus nostris potentiores opulentioresque efficiant. Quibus omnibus prospicere imperantis sine dubio est officium.* Marquardus, *de jure mercat.* lib. 1, cap. 17. *de restrictione et coarctatione commerciarum, itemque jure prohibendæ transvectionis mercium.* After having shewn the right which nations have to prohibit, restrain, or augment the importation or exportation of goods, he details the regulations made on this subject by the French, Scotch, Italians, Flemings, and other nations. See, Bodinus, *de republica.* lib. 1, cap. 6 et 7. Loccenius *de jure maritimo,* lib. 1, cap. 4, § 8. Vattel, *Droit des Gens,* lib. 2, ch. 2, § 32, *et* 33.

Rights of fishing are regulated by general laws.

state, and sound reason evinces that they are free, precisely because, they are regulated by the laws of the country.

4. True civil liberty, is that which secures our lives and properties, and enables us to make use of both with promptitude, and at pleasure, in all cases, not contrary to the public welfare, nor to our own individual happiness.

5. This maxim once established, it follows, that the liberty of maritime navigation should be regulated by those usages alone, which accord, both with private interest, and the public good. As there is no civil liberty where laws are not strictly observed, so there can be no freedom of navigation, unless it be governed by a wise system of rules, and regulations: if crimes on the sea remain unpunished, and the caprice of private interest obtain the ascendancy, they will soon become triumphant.

6. Though the right of fishing may be considered as one of the consequences of maritime empire; yet the prince, or sovereign proprietor of the territorial sea, usually reserves to himself, the great fishery only, or that which is carried on at stated seasons of the year, and at certain places; or, in short, some particular kinds of fishing. He does not prohibit that which is carried on for the use, and to supply the wants, of his subjects. He even permits the people

of neighbouring countries, not his subjects, to fish, when a similar liberty is granted on their part.(260)

7. Sovereigns are not in the practice of entirely depriving their subjects of the liberty of fishing, given by nature to all mankind, as their proper right, and as a means of subsistence. This is agreeable to the observation of Seneca,(261) approved by St. Ambrose,(262) who says, that the exchequer ought not to appropriate to itself all the fish, as if they were the productions of the field. For this reason, great fishing only, is ranked among the *regalia* of the sovereign, and thus far only abridges the ancient and natural liberty of every maritime people.(263)

8. In consequence of this prerogative, it still belongs to sovereigns to prescribe the manner, kind, and seasons, of fishing in the seas within their do-

(260) Selden, *Mare Clausum*, lib. 2, cap. 21. Loccenius, *de jure maritimo*, lib. 1, cap. 9, n. 2. Targa. *Pond. mar.* cap. 4, n. 3, 4, &c. Stypman. cap. 4, n. 3, &c. *"Inhumanum a quotidiana, piscatura vel subditos vel vicinos in vasto mari, licet occupato arcere."*

(261) Seneca, *De beneficiis.* lib. 4, cap. 5 *et* 6, *ibi. Animalia omnis generis alia in sicco solidoque, alia in humido innascentia, alia per sublime dimissa, ut omnis rerum naturæ pars tributum aliquod nobis conferret.*

(262) D. Ambros. *Hexæmer*, lib. 5, cap. 32, *ibid. Qui piscium jura sicut vernaculorum conditione tibi servitii subjecta commemorant.*

(263) Cujac. lib. 1, *Observat.* chap. 2. Sixtin. *de Regaliis*, lib. 2, cap. 18, n. 30.

minions. This has been done by the different states of Europe, who forbid the use of nets, injurious to the multiplication of fish.(264) Almost all nations have, in this respect, special laws to regulate fishing, and particularly to prohibit, or allow it to foreigners. Hence; public treaties have been made on this subject, for the benefit of nations; such as that in 1456, between Henry VII. and Philip, archduke of Austria. The English and Dutch, in like manner, are allowed to fish in the seas of Denmark and Norway: and a convention has been entered into between France and England, to fix the times and places of fishing. As to the pretended right of the states-general, mentioned in the first chapter, article V. to take fish on the coasts of the British isles, it has always been a subject of dispute between England and Holland.(265)

9. The liberty of fishing is subordinate to that of navigation, because the interests of mankind render the latter necessary to all, while the former concerns only a small number of persons who are devoted to it. For this reason, in the latter periods of the Ro-

(264) See my discourse, *on marine fisheries*, read at the public sittings of the academy at Marseilles, the 25th July, 1802.

(265) *Ordonnance de France*, underthe titles, *du Rivage, des Parcs, et des Madragues*, and Valin's *Commentaries*. Selden, *Mare Clausum*, lib. 2, cap. 21. Stypman. *Jus marit.* cap. 4, n. 11. Sixtinus *de Regaliis*, lib. 2, cap. 18. Rousset, *Interêts des Prince*, p. 322.

Fishermen must not obstruct navigation.

man power, it was prohibited, by an edict of the prætor, to erect any establishment in the sea, or on the shores, which might injure, or obstruct navigation.(266)

10. The general usage on this subject, is in direct conformity with the Roman laws. All fishermen on the sea, are obliged to take care not to create any impediment to the passage of vessels by their nets, seines, and fishing machines, under the penalty of being condemned to make good all damages.(267)

(266) Leg. 5, § 17, lib. 43, tit. 12. Digest, *de fluminibus.* Leg. 3. Dig. ib. *nequid in loco publi.*

(267) Dig. lib. 43, tit. 14, § 3 *et* 7. *Ut in flumine publ. navig. lice.* Leg. 24. Dig. *de Damno infecto. Capitoli del Re. D. Pedro d'Arragone, dei* 22. November 1340, § 24. *Ordon. de France,* art. 2, tit. *du Rivage,* art. 11, 12, *et* 13, tit. *des Parcs,* art. 3, 4, *et* 8, tit. *de Madragues,* and Valin's *Commentary.* Stracca, *de Naviga.* n. 10. Cæpella *de Servit. rustic. præd.* cap. 27. Stypman. *de jure marit.* cap. 5, n. 31. Targa, *Pond. Marit.* cap. 4, n. 11.

CHAPTER IV.

OF THE ORIGIN AND PROGRESS OF MARITIME LAW.

ART. I.

Of Commerce and Navigation, as sources of maritime Legislation.

§ 1. THE force of public and universal opinion, which, in the first ages of the world, made all nations warlike, compelled them, in the sequel, to become commercial. Agriculture, commerce, and the genius of industry, at length united to engross the empire of talents. The love of conquest, succeeded by the spirit of chivalry, has been followed by the love of peace. From that period, legislators, more just and more humane, have respected the lives and tranquillity of the people. Mankind began to abate their natural ferocity, and to temper that impetuous ardour which impelled them to extend the bounds of their dominion. An universal shock was necessary to Europe, that, at the sight of so many contrasts, it might learn the theorems of political economy, essential to public happiness.(268)

(268) Montesquieu, Esprit des Loix, liv. 20, ch. 1, liv. 21, ch. 11.

Importance of commerce, and its beneficial effects.

2. The enterprising genius of man found a favourable occasion to direct itself towards political interests, and it thenceforth became more bold and energetic, though the means of enriching itself appeared more difficult and dangerous.

3. The nations of Europe saw that commerce was the only means of maintaining the glory and safety of the state. At this period, commerce was placed in the rank with other sciences, and the history of the progress of civilization, knowledge, and the arts, which is that of commerce, was regarded as an essential part of the history of empires, and as comprehending a subject the most extensive and the most interesting to mankind. Great states soon placed all their strength in commerce, as the support of their glory. Governments settled their finances on a foundation more just and secure ; trade became a source of wealth to individuals, the basis of family establishments, and the only means of living in ease and splendour. So that commerce, now become the necessary occupation of most nations, has been the only means by which they have attained that height of prosperity and power which they enjoy.(269)

(269) " Commerce," says M. Vital Roux, in his excellent work, entitled, *De l'influence du Gouvernement sur la prosperité du Commerce, p.* 11, " supports and vivifies all the branches of industry ; " it sends abroad the productions of the nation, to exchange them " for new riches ; it cherishes the enthusiasm of the artist, while it " enriches and facilitates the discoveries of the learned."

Futility of the reasoning of philosophers against commerce.

4. Let us leave to *pseudo*-philosophers, to modern declaimers, who wish to plunge mankind again into that barbarism from which they have emerged by the aid of commerce, to affirm that it destroys morals and the political strength of nations; and that the vices attached to prosperity, have supplanted those virtues, and inestimable benefits, which result from the simplicity and poverty of an uncommercial people. The illustrious author of Telemachus has prepared an answer to these absurdities. "The Tyrians, " says he, " are industrious, patient, " laborious, sober, and economical; their police is " exact, and the most perfect harmony exists among " them. No people were ever more sincere, faith- " ful, courteous, and obliging to strangers. Such " are the means, without seeking for other causes, " by which they have acquired the empire of the " sea, and rendered the commerce of their port " so extensive, and flourishing. If jealousy and " faction should arise amongst them, if they should " become addicted to pleasure and idleness; if they " should sink into effeminacy; if the great should

Huet is mistaken, or too fond of antithesis, when he says that the ancients assigned commerce by land to the golden, and maritime commerce to the iron age, as actuated solely by avarice, and carried on by an unconquerable temerity. The learned M. Peuchet, in the preliminary discourse to his *Geographique commercante*, replies to this observation in the following terms: " Navigation is " not originally the effect of avarice; it arises from curiosity, and " commerce has turned to profit, this almost miraculous means of " communication between different nations."

" despise labour and economy; if the arts should no " longer be deemed honourable; if they should " cease to observe good faith towards strangers; if " they should violate, in the least degree, the laws " of free commerce; you would soon see them fall " from that power which is now the object of your " admiration."

5. A modern economist has, also, successfully refuted this anti-social paradox, so often repeated in our time.(270) M. Vital Roux thus speaks of com-

(270) In 1777, the Academy of Marseilles, proposed the following prize question: "*Quelle à eté dans tous les temps, l'influence du commerce sur l'espirt et les mœurs des peuples.*" What has been, in every age, the influence of commerce on the spirit and manners of nations? How could a society of learned men, established in a city which owes every thing to commerce, support and crown by their suffrages, a discourse, the object of which is to prove, by specious sophisms, and ingenious paradoxes, that commerce has always enervated the spirit, and depraved the morals of a nation, and is, in its nature, and effects, incompatible with great virtues?*

* The anwer is obvious. Learned men, *les savans*, are often lovers of paradox, and take more pleasure in exercising their ingenuity, in defending absurd opinions, than in supporting the simple truth. The following anecdote will serve to illustrate this remark, and may amuse the reader. In a conversation between Marmontel and Voltaire, of which J. J. Rousseau was the subject, the former related, what Diderot once told him, of the philosopher of Geneva. " I was," says Diderot, " a prisoner at Vincennes; Rous- " seau came to see me. He had made me his *Aristarchus*, as he expressed " himself. One day, during a walk, he informed me, that the Academy of " Dijon had just proposed an interesting question, and that he was desirous " of discussing it. The question was, ' Has the restoration of the arts and " sciences contributed to refine manners?' *Le retablissement des sciences et* " *des arts, a-t-il contribue a epurer les mœurs?* ' Well,' said I, ' which side

Commerce promotes the happiness of nations.

merce: "Barbarous nations, whose conquests have "so often laid waste the fairest portion of Europe, "would not have gone so far in search of un- "known wealth and happiness, if they could have "drawn them, by means of traffic, to their own "homes. If commerce had penetrated their de- "serts, it would have transformed their vast forests "into fertile fields, their lonely huts into pleasant "towns, and their country, thus endeared to them, "would not have been abandoned without regret. "But what can a nation do whose sole employment "is the chase, that serves only to nourish fero- "city? It devours itself, or vents its impatient fury "on distant objects. Society cannot exist where "labour is not necessary; idleness is the nurse of "insubordination, that breaks forth within, or seeks "for gratification abroad; for he who creates no- "thing, loves only to destroy. Commerce, on the "contrary, excites a love of labour; the ease which "it produces, attaches us to our country, and there- "by invigorates the government; commercial na-

"do you mean to take?' He answered, 'the affirmative.' 'That is,' I repli- "ed, 'the asses' bridge; men of moderate talents will take that path, and "you will find in it nothing but common ideas, whereas the other side pre- "sents a new, rich, and fertile field for philosophy and eloquence.' 'You "are right,' said he, after a moment's reflection, 'and I will follow your ad- "vice.' Thus, from that moment, his part and his mask were decided. 'I "am not at all surprised,' said Voltaire; this man is factitious from head to "foot, in mind and soul. But he has played well, at one time the stoic, at "another the cynic; he will always betray himself, and his masque will sti- "fle him." See *Oeuvres Posthumes de Marmontel*, tom. 2, page 240, Paris, (1804).....T.

" tions direct all their attention to the promotion of " industry, because it produces the greatest sum of " happiness. Ambition, which impels barbarous na- " tions to war and devastation, inspires a commercial " people with patriotism. The happiness of the " one, is placed in destruction ; the felicity of the " other consists in the prosperity of all."

6. As soon as the spirit of commerce acquires strength and ascendancy in a state, a new genius is seen to animate its government, to direct its alliances, its wars, and negociations. The most decided proofs of this are exhibited in the history of the Italian states, the Hanseatic league, and the cities of the Netherlands, during the period which elapsed from the ninth to the sixteenth century. In proportion as commerce spread among the different nations of Europe, their views were directed towards those objects, which engage the attention of polished states, and to the adoption of the manners by which they are distinguished.(270) Commerce does not, therefore, corrupt manners, continues the learned Peuchet; it does not produce a declension of morals; it is not the cause of those vices which arise from increased population ; otherwise, agriculture must participate in the anathema, which is hurled exclusively against commerce, since, it may be justly,

(270) See, Robertson's *Introduction to the History of Charles V.*

Commerce necessarily connected with navigation.

and emphatically termed, the nurse of the human race, and the chief cause of population.*

7. Commerce soon became linked with navigation, by those necessary ties of correspondence, which draw towards each other different nations and countries. To derive advantage from this union, it was necessary to establish a communication with the different parts of the world, which could not be accomplished without inventing an art, by means of which seas might be traversed. Such was the origin of navigation.

8. Navigation is one of those arts the commencement of which is veiled in the deepest obscurity; arts which are the tardy fruits of necessity, chance, activity, experience, and pride. This idea is most happily expressed by Lucretius, in three lines of his immortal poem.(271)

> Navigia atque agriculturas, mœnia, leges,
> : : : : : : : : : : : : : : :
> Usus, et impigræ simul experientia mentis
> Paulatim docuit pedetentim progredientes.

Navigation having reached a certain degree of perfection, gave wings to commerce and maritime in-

* Some new and interesting views of the necessary connexion between subsistence and population, and its effects on the happiness of society, are to be found in the work of Mr. *Malthus*, entitled, "*An essay on Population*," second edition, 4to.....T.

(271) Lucretius, *de natura rerum*, lib. 5, l. 1447—See ante p. 2, and 3, of chapter 1.

Rapid progress of navigation after the invention of the compass.

dustry. Man, disdaining the narrow limits of his native soil, boldly advanced into unknown seas, and with the help of the compass, before invented, but not brought into immediate use,(273) found out a passage to the East-Indies by the Cape of Good Hope, discovered the West-Indies, or America, and measured the circumference of the globe, not to gratify a vain curiosity, but to extend the blessings of commerce, to procure new enjoyments, and satisfy new wants.

9. The mariner's compass changed the principles of navigation. Hitherto, mankind possessed only gallies with sails and oars, a kind of vessel, at best adapted only to keep along the coast, which they seldom dared to quit beyond a certain distance. Until this period, navigation was, according to the generally received opinion, no more than a sort of *coasting;* but, as soon as the use of the compass was perfectly understood, its progress was followed by a marine. Men began to brave, on the high seas, adverse winds and tempests; to learn the course of the *monsoons*, to avoid rocks and currents, no longer to fear being lost when out of the sight of land, and to become masters of that terrible element that had often made them tremble. Vessels of a different size, and fit to navigate in every latitude, soon appeared on the ocean. Voyages be-

(273) See my *dissertation sur l'origine de la Boussole,* in the introduction to the second edition, printed at Venice, 1797.

Conquest in India and America, distinguished by violence and cruelty.

came shorter, transportation safer and less expensive, communication was every where opened, commerce increased and assumed new splendour.

10. It was then that the kingdoms of the east first saw arrive on their shores, those immense European structures, from which issued men, who, from one hand, shed over the populous tribes of India the beneficent light of Christian truth, and from the other, the destructive fire of war, treachery, and vice. Then did the Portuguese zealot erect on the banks of the Ganges, sumptuous altars, not so much for the adoration of the Divine Dispenser of all good, as of their idol, interest. Then did the rich mines of Potosi attract to the continent of America, those exterminating expeditions, made by the Spaniards, in the name of the God of Peace. Then did the tolerant Batavian, just free from foreign chains, obtain from Indian generosity, in exchange for his merchandize, that protection under which he formed batteries to thunder in the ears of amazed and too credulous hospitality. They tore by violence from the wretched inhabitants of those unfortunate countries, what they would have freely and liberally granted. Cupidity, ever unjust and atrocious, made them forget that these nations were composed of men. Instead of the virtues, they were offered chains, and under the pretext that they did not follow a religion of which they had never heard, they were murdered, to enrich their conquerors with their spoils. Whole nations were im-

molated for their fatal contempt of the true faith, or rather, to gratify the thirst of gold, for which the interest of religion was but a specious veil. A portion of Europe was depopulated, to replace these victims of avarice, or to make new sacrifices.(274)

11. At the cries of humanity, the carnage ceased, and the victors contending with each other for the spoils of the vanquished, engaged in their quarrels the nations whom they had so cruelly treated. Yet emulation and industry were reanimated. Those nations who, instead of laws, possessed a marine, dreamed of nothing but the establishment of factories, and colonies in the other hemisphere. The immense seas, which nature seems to have placed between countries to separate the different nations of the world, soon became the means of their reunion, and of that mutual commerce, which, by drawing them closer to each other, may be said to make them one nation.

12. Policy and jurisprudence were soon engaged in regulating those commercial transactions, the names of which were hardly known; the economy of navigation, which they meant to encourage; the dangers and perils of the sea, which they were anxious to diminish or prevent; the safety of transportation, which might be assured, became the

(274) The recent usurpation of the kingdom of Mysore, and the death of Tippoo Saib, sufficiently prove that men are always unjust, when actuated by cupidity.

most interesting and profitable objects of legislative policy; at the same time, that the formation and support of harbours, the system of a military marine to protect the activity of the commercial marine, the facility of navigation, the construction and equipment of vessels of every kind, attracted the regards and fixed the attention of the governments of Europe.

13. The science of legislation has embraced new objects: the regulation of the wages of labour, the compensation of risks, the indemnities in cases of assurance, and in contracts of bottomry; contributions for losses, happening by tempests at sea, in cases of jettison, or waste of goods, for captures of vessels in time of war; in a word, the principles of the various contracts of a similar nature, which grow out of the numerous branches of industry and commerce, increasing every day, by the vigilance and fostering cares of government.

14. From this period, maritime commerce has become an essential object, in the organization and existence of political bodies, and has been neglected in no wise plan of legislation; since, it is not merely the tie which unites all nations and climates, but the soul, the support, and wealth of the state; for, by familiarising men to navigation, it forms seamen, and facilitates those great naval enterprises which open the way to that maritime power, which at the present day, has so much weight in the balance of Europe.

Increase and progress of maritime laws and ordinances.

15. In the early periods of navigation and commerce, a small number of laws were composed, proportioned to the extent of maritime traffic; but navigation, the only means of obtaining superiority in commerce, having greatly increased its operations were multiplied, as the wants of men became more numerous; the marine also, having put more hands to work, as its utility and benefits accelerated its progress, a greater number of regulations, and a more enlarged system of legislation became necessary.

16. Hence, proceeded the great multiplicity of laws, and maritime ordinances. The first relate to objects common to all nations, and are called the laws, or the public maritime rights, of war and peace; the second comprehend the particular interests of each nation, and are denominated the laws and rules of commercial and maritime contracts.

17. Some of these laws, either on account of the veneration entertained for the ancients, or from an opinion of the superior wisdom of those who framed them, or from the spirit of equity which pervades them, or, in short, on account of the power and reputation of the nation by which they were first promulgated, have become the common law of all nations; such are the Rhodian and Roman laws. Others, on the contrary, have remained, as at first, mere local ordinances. With the aid of history and

The Rhodians were the first who published maritime laws.

criticism, we shall rapidly pass over the periods of their origin, and show the progress of universal maritime law.

ARTICLE II.

Of the Rhodian Laws.

§ 1. THE Rhodians, as history informs us, were the first among the ancient nations, who published maritime laws. The practice of navigation, and the different cases which arose on maritime subjects, rendered it necessary for the inhabitants of Rhodes to compile a body of naval laws, which breath the spirit of justice and humanity. Cicero extols the discipline of the Rhodian marine to the highest pitch of glory, and declares, that in his time, it was still the object of admiration.(275) Strabo also speaks in praise of Rhodes, which he found governed by admirable laws, and especially those relative to maritime affairs.(276) It is, doubtless, a noble sight, says

(275) *Rhodiarum usque ad nostram memoriam disciplina navalis, et gloria remansit.*——Pro lege Manilia.

(276) Strabo in speaking of Rhodes, lib. 14, uses the following words: θαυμαση δε και η ευνομια, και επιμελεια προσ τε την αλλην πολιτειαν, και τα ναυτικα, αφ' ησ εθαλασσοκρατησε πολυν χρονον, και τα λησηια καθειλε, και Ρωμαιοισ εγενετο φιλη, &c. Their excellent laws, and the care bestowed on every part of their political administration, particularly in what concerned their naval affairs, are worthy of admira-

The Rhodians were favoured by Alexander the Great.

a learned writer of the present time,(277) to behold a nation more occupied with commerce than conquests, a small republic, ruling over powerful states, and indebted to its legislation for that vast influence, which draws to its bosom citizens from every part of the world.

2. The importance of these laws, so often cited and mentioned in the Roman law, has induced me to have recourse to historical records to discover in what manner, and at what time, they were adopted by Rome; into how many chapters they were divided; what were those which Justinian preserved; and which of them still exist uncorrupted and entire.

3. During the war of Antigonus against Seleucus, and his allies, the valour and maritime power of Rhodes were displayed to the greatest advantage. Alexander the Great, always treated them with distinction; for that reason, they carefully avoided taking any part in the disputes which arose between his successors. The favour shewn them by these princes, a long peace, and uninterrupted commerce,

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tion; by these the Rhodians maintained the empire of the seas for a long period, expelled the pirates, and acquired the friendship of the Romans.

(277) *M. de Pastoret*, in his excellent *Dissertation sur l'influence des lois maritimes des Rhodians*, which gained the prize of the Royal Academy of Inscriptions and Belles-Lettres, in 1784.

Rhodians faithful to Ptolemy, are attacked by Demetrius.

rendered them so powerful, that, without any foreign aid, they undertook to rid the sea of pirates. Their maritime situation, which, on account of the support they derived from Egypt, rendered their commerce with that kingdom equally necessary and advantageous, induced them to remain faithful to king Ptolemy. Antigonus wished to force them to take part with him, and to open a free communication with their island, during his war against Egypt. They refused this request with firmness, resolving to suffer every extremity, rather than to abandon their ally. They sustained, in consequence, for a whole year, a most dreadful siege, carried on by his son Demetrius, the most experienced and most skilful general of the age in the attack of maritime towns, and whose personal talents, in this conflict, appeared more formidable, than the naval forces which followed him, consisting of above four hundred sail of gallies and other vessels. The Rhodians were compelled at last to make peace with their courageous adversary, but their valiant resistance procured them favourable terms.

4. When Rome was preparing to conquer the east, the Rhodians dreading the victorious ensigns of that enterprising and insatiable republic, gladly united with her and became her friend. They observed the same conduct towards Rome as they had done towards the successors of Alexander, and were jealous of preserving their friendship. This alliance separated them from their connexions with Philip of

Macedon, and Mithridates, which were less to their advantage. It was at this time, that the Romans had an opportunity of being acquainted with the merit of the naval jurisprudence of the Rhodians, which they afterwards adopted. Their maritime laws were received at Rome, not as other Greek laws engraven on twelve tables, and which were engrafted into the Roman code, after they were solemnly re-enacted by the people, but were held in such high veneration, that they always retained their original name, without being inserted in the twelve tables. They were not even inscribed in the books of the prætor, and they gave rise to no action ; but the opinions of lawyers were founded upon the Rhodian law *de jactu*, although it was not clothed with the sanction of the people, in conformity to which the judges were bound to decide. The lawyers, Servius, Labeo, Ofilius, Alfenus Varo, and Sabinus,* are the first

* Servius Sulpitius, the friend and companion of Cicero, saw the last days of the republic. Antistius Labeo, Ofilius, and Alfenus Varus, lived under Augustus. The latter was a shoemaker of Cremona, who, discarding his occupation, went to Rome and attached himself to the school of Servius. His eminent virtues, and great knowledge of the law, raised him to the consulship, and he died loaded with public honours. Horace, who was the flatterer of Augustus, whom Labeo despised and hated, as the destroyer of the liberties of his country, thus satyrizes him.

——————— *Labeone insanior inter*
Sanos dicatur.

Hor. lib. 1, sat. 3.

Augustus sanctions the Rhodian laws.

who have taken notice of these laws; and when Servius gave the celebrated answer, that will be mentioned in its place, the Roman lawyers had not yet received from Augustus, the authority, in consequence of which the judges were no longer allowed to evade the provisions of the Rhodian law.

5. Augustus was the first who gave to these laws a Roman sanction. He wished them to be observed, in the same manner as the Julian law, promulgated by him. This appears from the ninth law of the Digest *ad legem Rhodiam de jactu.** The emperor Antoninus, solicitous to determine a maritime controversy, answered, that it must be decided, in that and similar cases, according to the law of Rhodes, the mistress of the sea, whenever it was not contrary to the laws of Rome, since it had been so settled before by Augustus.

To Alfenus, the poet applies the lash with a gentler hand:

> ——————— *ut Alfenus vafer, omni*
> *Abjecto instrumento artis, clausaque taberna,*
> *Sutor erat; sapiens operis sic optimus omnis*
> *Est opifex, sic solus rex.*——————— Ibid.

Masurius Sabinus was first noticed by Augustus, and lived to be neglected by Adrian. Gravina, *de ortu et progressu juris civilis,* lib. 1, § 64, 67, 70, 72, 73, 80.....T.

* Dig. lib. 14, tit 2, see *infra,* note, the latin translation of the Greek text of Volusius Mecianus.....T.

6. Whether this answer be nothing more, as Godefroi supposes, than a reflection of Volusius Mecianus,* who reports the decision of Antoninus, or whether it be, in fact, a part of the answer itself, according to the custom of the emperors, to recur to the decrees of their predecessors, as Bynkershoek maintains, it is certainly true that Augustus solemnly recognised the Rhodian law, as that of Rome, by making this law, which possessed at first an authority merely conventional, vague, and uncertain, stable, legal and authentic.

7. A law so respectable, which, notwithstanding its great antiquity, still exists, was probably received at Rome, not only on account of what relates to *jettison*, made by a ship in case of a storm, but to all other events happening at sea, excepting such as had already been decided by the Roman laws. The same law that has preserved the rescript of Augustus, affords grounds to believe that it was adopted entire by that prince. In fact, the case of which that law treated, did not relate to *jettison*, but to shipwreck; and the answer of Augustus, which is general, and attributes to the Rhodian law the empire of the sea, proves that many of its regulations were then acknowledged at Rome.

* Volusius Mecianus flourished under Antoninus Pius, who held his opinions in the highest estimation. Gravina, *ibid*, lib. 1, 93....T.

Harmenopulus and Domitius affirm the authority of the Rhodian laws.

8. Constanstine Harmenopulus, a writer of the 14th century, has explained, in this sense, the provision of this law, in his *Promptuarium*, tit. 2, lib. 2.* He, there, proves that all maritime controversies ought to be decided by the regulations of the Rhodian laws, in all cases not contrary to those of Rome, since they were naval laws; this is what he establishes, in his account of the law 9, just mentioned. Docimius, or Domitius, in his book *de Jure*, says, that all maritime affairs, which are presented for decision, must be adjudged and determined by the Rhodian laws, whenever they are not contrary to those of Rome; for, besides being the most ancient naval laws extant, the greater part of them are excellent, and there is nothing in the rest deserving of censure.

9. The celebrated Cujas† maintains, that in all maritime questions, the Romans ought to adhere to

* Vinnius, *Note ad Comment. Peck. ad legem Rhodiam*, p. 189, quotes the Greek passage from Harmenopulus, lib. 2, tit. 11, and refers to the *Jus Græco-Rom.* lib. 2, of Docimius. He remarks, that the Rhodian Laws were considered as the law of nations throughout all the Mediterranean.....T.

† Jacobus Cujacius was born October 1590, at Tolosa, a town of Biscay in Spain, and died in his 60th year. Gravina remarks of him, that had he lived in an earlier age, he would have served, instead of all the other interpreters of the Roman law; "*Neque enim aliquid ignorare per illum, neque sine illo discere quidquam licet.*" *De ort. et prog. jur. civ.* lib. 1, § 180.....T.

the laws of Rhodes, if there is no particular law existing to the contrary; and this in conformity with the directions of Augustus, expressed in the 9th law of the Digest, above cited. He adds further, that in different codes, after the words *ad legem Rhodiam*, is read, *de nauticis*, and he affirms, that the Romans borrowed from the Rhodians many laws relative to navigation.

10. I take no part in the opinion of those who maintain, that all the laws of Justinian on the subject of shipwrecks, and other maritime affairs, besides those included under the title of the law *Rhodia de jactu*, are taken from the ancient Rhodian laws, at least as to the substance, though expressed in different terms. They even pretend, that the *actio exercitoria** is derived from those laws. I am not disposed to disbelieve this fact, so much am I persuaded of their real excellence, and of the veneration in which they were held by the Ro-

* In the Roman law, the owner or employer of a ship, was termed *exercitor*, and had the appointment of the *magister*, or master, who had authority to make contracts in relation to the ship, which were binding upon the owner, or employer, against whom an action might be brought on such contracts, or even for the faults of the master, which was called, *actio exercitoria*, Dig. lib. 14, tit. 1, leg. 1, *et* 15. Roccus, *de navibus et naulo*. Not. 3, et 11, &c. Peckius, *ad rem nauticam*, p. 2, *et* 69. The same principle prevails in the laws of England, and other commercial countries. Molloy, *de jure maritimo*, book 2, ch. 2, § 14. Guidon, ch. 18, art. 4. Pothier. *Chart. part.* § 2, art. 3.....T.

Did Justinian adopt the whole, or a part only of the Rhodian laws?

mans; but as there is no solid reason to adopt an opinion, that can be supported only by conjecture, it does not appear right to decide positively on a fact so uncertain, when it is my business to weigh the sentiments of others, the better to explain my own; more especially, as Justinian, by preserving the name of this law, in relation only to a single subject, *de jactu*, appears to have intended to retain the Rhodian laws, which relate to that matter, and not any others.

11. Justinian was pleased to adopt that part of the maritime jurisprudence of the Rhodians, that relates to goods thrown into the sea, during a storm, or in case of imminent danger of shipwreck, and to preserve the laws with their name. It is surprizing, after the praises bestowed by him on these laws, that Justinian should have wished to retain only one title of them, as if he had rejected the rest, or that all the Rhodian laws should be comprised in a single chapter.

12. Amidst this obscurity of facts, and the silence of ancient writers, I do not hesitate to say, that among all the possible events incident to navigation, that of *jettison*, being the most frequent, and the most general, on account of the accidents continually happening to navigators, Justinian considering, perhaps, that this matter had been eminently well settled by the Rhodian law, adopted and preserved it,

with the intention, that all other cases should be decided by the Roman laws.

13. Yet Justinian, who meant to preserve only the single chapter *de jactu*, has, in law 9, introduced a rescript of the emperor Antoninus, who, in a case of shipwreck, and not of *jettison*, refers the affair to be decided by the Rhodian law, which he wishes to be followed in cases where there was no law of Rome to the contrary.(278) It appears, then, that this law concedes to that of Rhodes the empire of the sea, and does not restrain it to the single case of *jettison;* but, without taking it in the same sense with Tribonian,* who, according to his usual *tribo-*

(278) Leg. 9, Dig. (lib. 14, tit. 2.) *Ad legem Rhodiam de jactu. Deprecatio Eudæmonis Nicomediensis ad Antoninum Imperatorum. "Domine Imperator Antonine, naufragium in Italiæ facientes, direpti sumus a publicanis Cyclades Insulas habitantibus." Respondit Antoninus Eudæmoni. "Ego quidem Mundi Dominus, lex autem maris lege id Rhodia, quæ de rebus nauticis præscripta est, judicetur, quatenus nulla nostrarum legum adversatur. Hoc idem Divus quoque Augustus judicavit."*

* Tribonian, the favourite and oracle of Justinian, was employed, with nine other lawyers, by that emperor, to digest the immense mass of Roman laws into one code; which was accomplished in three years. This extraordinary man, for profound and various learning, as well as for his avarice and meanness, is compared by Gibbon, to Lord Bacon.—*Gibbon's Decline and Fall, ch.* 44. Tribonian has been greatly censured by modern writers and interpreters of the Roman law, for the choice he has made for the Digest and Code; and all the errors and contradictions to be found in the Pandects, the Institute and Code, the faults of arrangement, and

Tribonian's conduct as to this law.—Cicero refers to the Rhodian law.

nianism, appears to have inserted the law of Mecianus without attending to the title under which he placed it, it may be said, that this lawyer, in order to give an idea of the Rhodian law, from which he has extracted ten laws, wished to make it appear, that the regulations of that law, as well as its name, had been adopted by Augustus, and by Antoninus. Justinian, for that reason, transmitted it, in part, to posterity. Certain it is, that, as far as the title, *ad legem Rhodiam de jactu*, appeared new and curious, it would have remained obscure, if the 9th law, which forcibly explains it, had not been inserted.

14. The ancients have spoken of the Rhodian laws, and have pointed out some, which are not to be found in the Roman compilation. Cicero mentions a case decided by those laws, according to which, if a ship of war* is found in port, it ought to be confiscated. Men of learning have thought this a case imagined merely for the sake of declamation.

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other defects, are charged upon him alone. Hottoman, the most violent of his censurers, says he poisoned and corrupted every ancient law that he touched; and Gibbon observes, that "the favourite of Justinian was fearful of encountering the light of freedom, and the gravity of the Roman sages." He is praised by Cujacius, and defended by Gravina: *De ortu et progressu juris civilis*, lib. 1, § 137.....T.

* *Navis rostrata*, so called from having its stem covered with a sharp beak made usually of brass. The words of Cicero are, *Lex est apud Rhodios, ut, si qua rostrata in portu navis deprehensa sit, publicetur.* De Inventione, lib. 2, ch. 32.....T.

The Rhodian naval laws, the most ancient which are known.

Strabo speaks of another law of Rhodes, that condemned to death whoever dared to go within certain naval arsenals in that island, which were impenetrable to the common people;(279) but he does not mention the reason why they guarded, with such severe vigilance, some, and not all of their arsenals.

15. It is generally agreed, that the Rhodian are the most ancient maritime laws, of which we have any knowledge; it is not known, whether the Phœnicians, the Carthaginians, and other nations, formerly celebrated for their commerce, have ever published any. The ancient historians have preserved no trace of them, as they have of the Rhodian laws. Perhaps, as the Phœnicians, in the flourishing periods of the Roman power, had no longer any great reputation or commercial credit; and Rome, not considering herself safe, while the walls and name of Carthage existed, she neither deigned, nor wished to preserve the maritime laws of those two nations, even supposing any to have been published by them.

16. The Rhodian laws, therefore, whatever may be the period of their publication, are the fountain

(279) Strabo Geograph. lib 14, τινα και κρυπτα ην, και απορρητα τοις πολλοις· τω δε κατοπτευσαντι η παρελθοντι εισω, θανατος ωριστο η ζημια. Some things in their navy-yards were kept concealed, and were forbidden to be seen by the common people; and if any person was found inspecting them, or inside of the works, he was immediately punished with death.

Scardius and others publish laws under the title of Rhodian.

of maritime jurisprudence. There is no foundation for the supposition of P. Tournier, in his treatise on Hydrography, book 5, chap. 4, that they were published at the time when Jehosaphat reigned in Judæa, that is, seventy years after Solomon.

17. There exists, at the present day, a collection of maritime laws, under the title of the *Rhodian laws*, published at Basle in 1561, by Simon Scardius, with the laws relating to husbandry and military affairs, by Justinian II. and afterwards, at Frankfort, in 1596, by Leunclavius and Marquard Freer. It is to be found at the end of the second volume of the Greek and Roman law, obtained from the library of Francis Pithou. The title of this collection imports, that they were taken from the 11th and 14th books of the Digest, without mentioning, however, whether it is the Digest of Justinian, or that of the ancient Rhodian laws, divided into different books.

18. Such is the collection, known at this time, under the name of *Rhodian laws*. From a regard to that title, so respected by the ancients, they have been considered as the first maritime laws. They have, however, been variously considered by different learned men; some regarding them as genuine, others condemning them as spurious and apocryphal. Simon Scardius, by whom they were first published, considered them as authentic. Cujas

cites them as Rhodian laws. Leunclavius* and Marquardus Freer,† a short time afterwards, express no doubts concerning them. They are also comprised among the *Basilica*,‡ published with notes by Ch. Annibal Fabrot,§ at Paris in 1648. (tom. 6, liv. 3, tit. 8.) Selden, in his work, *de dominio maris*, in extolling the Rhodians, and their naval laws, says, they were in credit at Rome, in the time of Tiberius, and cites the Greek and Roman law of Leunclavius, which is the compilation just mentioned.

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* John Leunclavius, a native of Westphalia, died at Vienna, in 1593, at the age of sixty years. He was of a noble family, and possessed great learning. He published many works, among which are, an abridgement of the *Basilica*, and a volume entitled, *De Jure Græco-Romano*.....T.

† Marquardus Freer, was born at Augsburg, in Swabia, in 1565. He studied under the celebrated Cujas; and died in 1614. He was distinguished for various learning, and his acquaintance with polite literature. His works are voluminous, and some of them much esteemed.....T.

‡ *Basilica.* The Pandects, Code, and Institutes, were translated into Greek, and abridged into forty books, by Basil I. A. D. 888, which became the law of the eastern empire, to the entire exclusion of the latin codes of Justinian; to sink the name of that emperor, and elevate his own, Basil gave them the name of *Basilica.* Twenty books were afterwards added by his son Leo VI. and the whole have been known by the Greek appellation. Gravina, *De ortu et progressu juris civilis*, lib. 1, § 138. Gibbon's *Decline and Fall*, &c. book 48. See article 6, *post*.....T.

§ Charles Annibal Fabrot, was born at Aix, in France, in 1580, and filled the chair of professor of law, at the university in that

J. Godefroi and Vinnius speak of the Rhodian laws.

19. James Godefroi, in his work,* entitled, *de dominio maris*, supported by the 9th law *de jactu*, labours more than all the rest to give them authority, and to exalt their merit.

20. Arnoldus Vinnius,† who published with so much reputation, commentaries on Petrus Peckius,‡ on the titles of the Digest and Code, which treat of maritime subjects, omitted in the first edition, printed at Leyden, in 1647, what is found in a second, printed at Amsterdam, in 1688. In this last edition, he has inserted the naval law of the Rhodians, which concludes the second volume of the Greek and Ro-

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place. He was a man of immense erudition. His translation of the *Basilica* filled seven volumes folio, and he composed a great many works besides. He published a revised and corrected edition of the works of Cujas, with learned and curious notes, in ten vols. fol. He died in 1659.....T.

* The two Godefroys of Geneva, were men of great learning. The elder made numerous notes to the books of the civil law, but is regarded by Gravina as a man of more learning than acuteness. The younger, for abstruse erudition, choice knowledge of the law, and sound judgment, is ranked among lawyers, as second only to Cujas. Gravina, lib. 1, § 183—See note ante, page 215.....T.

† This distinguished man, so well known for his admirable commentaries on the Institutes of Justinian, was born in 1587. He was professor of law at Leyden, and died in 1657.....T.

‡ Peter Peckius, was a native of Ziriczee, a town in the province of Zealand, and died in 1589, at the age of 60. He was professor of law for 40 years in the university of Louvaine, in the Austrian Brabant.....T.

man law, and he adds, that he believes that he has thereby given greater value to his work, because, in that collection, are to be found many excellent things, very useful to be known by those who treat of maritime affairs. He affirms, afterwards, that Peckius was unacquainted with them, and that this treasure was, perhaps, still buried in the library of Francis Pithou. He had, notwithstanding, before him, another Greek manuscript, which contained a certain naval law of the Rhodians, given to him by William Gœsius, and who had taken it from the library of Nicolas Heinsius; but this manuscript, in several places, differs from that of Pithou's; and Vinnius has not failed to point out the difference.

21. James Andrew Crusius, maintains the authenticity of these laws; and Gravina,* following the opinion of Godefroi, adopts, without hesitation, every thing which is said in the preface, and in the collection, which bears the name of *Rhodian laws.*

22. Francis Baldwin, in his commentary on the *Voconian, Falcidian, Julian, Papia-Poppean, Rhodian,* and *Aquilian* laws, and upon the *Mucian jurispru-*

* John Vincent Gravina, was born at Rogliano, in the kingdom of Naples, in 1664, and died at Rome in 1718. He was a poet, orator, and man of letters, as well as a learned lawyer. He was the friend and patron of literary men, particularly the celebrated Metastasio. His law tracts are contained in two volumes, 4to. An edition of all his works were published at Leipsic in 1737, in 4to. with the notes of Mascovius.....T.

dence, printed in 1559, at Basle, in the life-time of the author, says, that he had seen several commentaries in Greek manuscript, entitled, *Rhodian laws;* but that they were an indigested mass of things relative to navigation; and by this single expression he gives his opinion on the laws, which pass under the title of Rhodian.

23. Anthony Augustin,* in his treatise *de legibus et senatus consultis*, printed at Paris, in 1594, eight years after his death, also, suspects these laws to be spurious; yet he remarks, that there was preserved in the library of St. Marc at Venice, belonging to Cardinal Bessarion, an abridgment of the laws of the emperors Leo and Constantine, in the beginning of which are some chapters, which speak of the Rhodian law, a part of which is found at the end of the eleventh book of the *Promptuarium juris* of Harmenopulus. He adds, that after the maturest reflection on another book he had seen at Rome, he discovered that that production was spurious, and the work of some Greeks.

24. Cujas, in his commentary on the second law *ad legem Rhodiam de jactu*, says simply, that they have not comprised in that collection the ancient Rhodian laws; but only the new. This great man,

* Ant. Augustin, a distinguished lawyer and statesman, descended from illustrious ancestors, was born at Sarragossa in Spain, and died in 1586, at the age of 69. Gravina, lib. 1, § 174.....T.

perhaps, thought that the laws in this collection, were not worthy of those Rhodians, so extolled by antiquity, nor of Rome, who never adopted any thing that was not excellent. He has not ventured to declare himself openly against these laws; but by saying that they were the new Rhodian laws, without adding any thing in their favour, he shews his own opinion of their merit, while he leaves us in obscurity as to the principal point.

25. At the commencement of the 18th century, Cornelius Van Bynkershoek, who has rendered so much service to universal jurisprudence, undertook to explain the ninth law, *ad legem Rhodiam de jactu*, above cited. He demonstrates the falsity of these laws; but he supposes his readers to possess so much information, that, if they have not obtained a knowledge of them from other sources, it is impossible to comprehend the refutation made by him, in the seventh chapter of his work.*

26. Pierre Vander Schelling examined the Rhodian laws, in a book which he published on that subject, in 1722. He declares, that he does not pretend to weigh the merit of them, nor to decide whether they are the work of some Greek, or are

* Bynkershoek, quoting the remark of Baldwin on this collection, who terms it, *incondita farrago de rebus nauticis*, adds, *et sane vix quicquam proferas, quod magis est inconditum. De lege Rhodia*, cap. 8.....T.

Heineccius declares the Rhodian laws to be spurious.

goods taken from the same warehouse, with the laws concerning husbandry, which pass under the name of Justinian. He does not venture to decide, whether it is a new body of Rhodian laws, published instead of the ancient, as Cujas asserts, or whether the preface only has been taken from the genuine naval Code of Rhodes, and, after its loss, attached to a work substituted in its place, under the name of the *Rhodian laws*.

27. After Bynkershoek had declared himself against these laws, other publicists, who were acquainted with the depth and solidity of his opinions, ranged themselves on his side, or spoke of the collection in doubtful terms. At length, the very learned Heineccius, in his work, entitled, *Historia juris civilis Roman. Germanic.* supported by the opinion of Bynkershoek, openly declared against the body of Rhodian laws, and against the authenticity of the preface, by shewing that it does not agree with history; and he expresses his astonishment, that so well informed a lawyer as Godefroi, had not discovered the imposture. Yet in his commentary on the title of the Pandects *ad legem Rhodiam de jactu*, he appears to have acknowledged this very preface as genuine, and original, an opinion he is very far from entertaining in his history.

28. The celebrated Giannone, in his excellent work, *Istoria civile del regno de Napoli*, falls into a multitude of errors, in speaking of these laws. In

book 2, ch. 6, § 2, he relates, that the Rhodian laws were so celebrated at Rome, that the emperors, Tiberius and Hadrian, and some of their successors approved and sanctioned them by their publication, that from thence is derived the Rhodian law, extracted from the eleventh book of the Digest found in the library of Francis Pithou, where it remained a long time buried in obscurity. Thus far, this author commits no material fault, since he only deceives himself, in taking for genuine the trash of naval laws, which since his time have lost all credit. Afterwards, in citing the eleventh book of the Digest, he refers, in the margin, to the title *ad legem Rhodiam de jactu*, inserted in the fourteenth book, (tit. 2,) of the Digest of Justinian, to another *de exercitoria actione*, and to the title *Nautæ, caupones, stabularii*, placed in the same book,* and to others which are not found in the Rubrick of the eleventh book.

29. This error of Giannone would be more excusable, if he had not added, that when the seat of the eastern empire became fixed at Constantinople, and this city, washed on three sides by the sea, had suggested to its sovereigns the idea of placing their greatest strength in naval armaments, the last of the emperors thought fit to publish many naval laws, col-

* This is either an error of the press, or of Azuni, for the title *nautæ, caupones et stabularii* is placed in book 4, tit. 9, of the Digest.....T.

lected afterwards in part by Leunclavius and Peckius, and in part by Vinnius. But, I ask, by which of these last emperors of the east was the collection of naval laws made, and what were those collected by the three authors cited? Leunclavius published the body of ancient Rhodian laws, as taken from the library of Pithou, with a preface, in which nothing more is said, than that they were confirmed by the Roman emperors Tiberius and Severus; and this is the collection which has been taken from the eleventh book of the Digests, of which he had just before spoken, as a different thing: Peckius has collected nothing; but has merely commented on the titles in the Digest and Code, that relate to navigation, without ever having seen the Rhodian naval laws, which, probably, as Vinnius observes, and as I have before remarked, were yet concealed in the library of Pithou. In a word, Vinnius has only enriched the work of Peckius by notes, and with learned observations, and reprinted the law of the Rhodians, without mentioning any law of the last emperors of the east on the subject.

30. The learned M. Pastoret, in analysing the Rhodian laws, has confined himself to the extract from them given by Leunclavius, in his *Jus Greco-Romanum*, by Morisot, in his work entitled, *Orbis Maritimus*, and by Targa, at the end of his treatise under the title, *Ponderazioni sopra le contrattazione marittime*. These laws, he adds, are nothing but an assemblage of those found in the Digest, and which

the emperors had successively put together, to compose their maritime jurisprudence; for it has been sufficiently proved, continues he, that the laws of Rhodes, as they were actually framed, have not come down to us.

31. After having seriously meditated on the various opinions which have been quoted, I shall take the liberty to make some reflections, for the purpose of showing the spuriousness of this Code, and to prove that it does not contain the genuine Rhodian laws.

32. This collection is said to have been taken from the 11th book of the Digest; this is repeated in all the editions, except in that of Paris, in 1647, in which this trash is placed in the 6th volume of the *Basilica*, book 53, tit. 8, where it is said, that the collection has been extracted from the 14th book of the said Digests. But of what Digests do they speak?* If of

* In an English work, entitled, "*A general treatise of the dominion of the sea; and a complete body of sea laws;*" the person who has translated the Rhodian laws into English, and commented upon them, does not hesitate to say that they are taken from the eleventh book of the Digests of the *Roman laws;* though if he had turned to that book of the Roman Digest, he would not have found a word relative to the subject. These laws are divided into two sections, the first containing 21 articles, and the second 51 articles; 47 of the latter correspond with the laws, printed by Vinnius in Greek and Latin, at the end of his edition of Peckius. The English translator says, the 48th and 49th articles are taken from the 2d and 5th titles of the same 11th book, and that the 50th and 51st

The Rhodian laws could not be taken from the Digest of Justinian.

those of Justinian, the 11th book treats of things wholly different from naval affairs. The fourteenth book contains various titles, and for that reason, I am inclined to believe that the Paris editor has put the 14th in the place of the 11th; but there is no proof at all that the Rhodian laws have been taken from that book. If, then, by the word Digest is meant that of the Rhodian laws, from the 11th or 14th book of which the collection in question has been taken, the difficulty will be still greater than in

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are extracted out of the 5th title of the 62d book of the Digests. In his preface, he remarks "that all these laws have been delivered to "us by Peckius, in his commentaries *de re nautica*, in two different "fragments, the first of which, he (Peckius) says had obtained the "sanction of the emperors *Tiberius, Adrian, Antoninus*, and seve-"ral others, and the last is to be found in the *11th book of the Di-"gests of the Roman law where it was inserted by the emperor Justi-"nian.*" The whole of this statement is erroneous. The commentaries of Peckius are expressly on the titles of the Digest and Code, which relate to maritime affairs, that is, lib. 4, tit. 9, lib. 14, tit. 1, and tit. 2, lib. 47, tit. 9, of the Digest, and lib. 2, tit 1, lib. 1, tit. 3, *et* tit. 5, of the Code. Peckius says not a word of any sanction of the emperors; and the 21st articles given by the English author as the translation of his first section, are not to be found at the end of the edition of Peckius. The 11th book of the Roman Digest contains nothing concerning maritime affairs; and as the Pandects consist only of 50 books, the two articles could not be found in a 62d book. How a person could fall into so many errors, is inexplicable; yet he professes to give a translation of the Rhodian laws as taken from *Peckius*, not one of which is to be found in that writer, who makes no mention of such a collection. The collection is, probably, taken from that published by Leunclavius in 1596, and which some writer, that the English translator has followed, has, by mistake, attributed to Peckius.....T.

the first case, because we know nothing of any such Digest, concerning which not the slightest mention is made by the ancients.

33. It is not so much from the title, as from the preface, that clear evidence may be drawn of the spuriousness of this collection. In the epigraph, it is said, that the Rhodian law was adopted at Rome by Tiberius, Hadrian, Antoninus, Pertinax, and Lucius Septimus Severus. Afterwards, in the body of the preface, which ought to agree with the epigraph, they speak only of the constitutions of Tiberius, Vespasian, Trajan, and Antoninus, without mentioning Hadrian, Pertinax, and Severus, as had been done in the title page: on the other hand, Vespasian and Trajan are introduced, who were not mentioned before; from which it is clear that the compiler did not belong to the flourishing periods of Rome, in which they wrote with more accuracy and good sense.(280)

(280) JUS NAVALE RHODIORUM.

Quod imperatores sacratissimi Tiberius, Hadrian, Antoninus, Pertinax, Lucius Septimus Severus, Perp. Aug. sanciverunt.

Tiberius Cæsar Augustus Pontifex Maximus, Tribunitiæ potestatis tricies bis. Quum me interpellassent, Nautæ, Naucleri, Mercatores, ut quæcumque in mari accidant in contributionem veniant, Nero respondens dixit: Maxime Sapientissime, Serenissime Tiberi Cæsar, equidem minime necessarium arbitror, ut quæ a Majestate tua proponuntur ipse collaudem, Rhodum mittito diligenter inquirens negotia Navigantium, Exercitorum, et Mercatorum, et Vectorum, et de oneribus, sive mercibus navalibus, et Societatibus, et Navigiorum emptionibus, ac Venditionibus, et Naupegorum mercedibus, et de auri argenti diversarum specierum depositionibus.

The account of the Rhodian laws is opposed to history.

34. History is entirely opposed to this account. The author of the preface affirms, that the Rhodian law was adopted at Rome, under Tiberius Cæsar, in the thirty-second year of his tribunitian authority, and in the consulship of Antoninus. But, if the Augustus here spoken of be Tiberius, no consul of the name of Antoninus existed in his reign. If, on the contrary, Claudius be meant, he reached only the twelfth year of his tribunitian power. To resort to the probable mistakes which may arise in the number of years, as Godefroi has done, is not a just and satisfactory manner of answering the objection. Besides, the author of the preface, after citing the answer of Antoninus Eudemon, (whose name, however, he does not mention,) which he introduces in order to give force and authority to the Rhodian law, adds, that Augustus had thus established it, and repeats, word for word, what is said by Mecianus. Now, if Augustus had given such an order, why not place him, as he ought to have done, at the head of the legislators on that subject?

Hæc omnia quum Tiberius decreto complexus esset et subsignasset, tradidit Antonio Clarissimo, Consuli et aliis Consularibus, qui eum consulebant in illa felici et orbium vertice Roma, Lauro, et Agrippino, Consulibus Clarissimis. Ab iisdem nominibus hæc etiam maximo Imperatori Vespasiano fuerunt oblata, qui quum et ipse in Senatu amplissimo ea subsignasset, Ulpius Trajanus una cum Senatu Clarissimo legem hanc Rhodiorum edicto sancivit.

An non et Antoninus ei, qui preces obtulerat, respondit? Ego quidem Mundi sum Dominus, lex vero maris lege Rhodia. Res nauticæ disceptentur quatenus ei nulla nostra lex adversatur. Idem et Sacrasissimus ille Augustus respondit.—See note (278) page 274.

The Code of Rhodian laws is the work of modern Greeks.

35. The manner in which this collection is made, as well as its contents, furnishes clear evidence against these laws. We find in them Latin words, written with Greek letters, such as πραίσαν, φρορρος, φίσχος, and others, which afford reason to believe, that these laws are not truly Rhodian, but the invention of modern Greeks, and that some foreign hand had been concerned in the composition. In fact, why latinise the words above cited? Was it that the Romans might understand them? Why not then have made an entire translation? It would have accorded with the dignity of Rome to have made the Rhodian laws speak its language. The Greek tongue, however, was, at that time, sufficiently familiar to the Romans, to have allowed them to preserve these laws in their original and native language. It appears, therefore, that this collection is the work of some Greeks of the 14th century.(280)

36. What, in the most irresistible manner, destroys the originality attributed to these Rhodian laws, is the variance between them and the chapter *de jactu*, which the Romans certainly borrowed from the Rhodians. What follows appears to me

(280) Those who are sufficiently acquainted with the Greek language, to distinguish the different changes it has undergone, in different ages, will easily perceive that these *laws* are written in that language, as it was spoken in the last period of the Roman empire, and not with the purity of the Rhodians of the age in which the Romans borrowed these laws from Rhodes.

A difference between the pretended Rhodian laws and those in the Digest.

an unanswerable proof on this subject. Hermogenes, in the 5th law, *ad legem Rhodiam de jactu*, says, that when goods are saved from a shipwrecked vessel, the owner of them shall not be liable to contribute to the damage; and that the practice of contribution takes place only in the case where a *jettison* has averted a common danger, and the ship has arrived safe. The lawyer Paulus, in the 7th law, h. t. declares, that when a ship is stranded, whoever saves any thing belonging to him, retains it for his own benefit. The Rhodian law, on the contrary, chapters 33, 39, and 40, decides, that the ship lost must be brought *in collationem*, into contribution, with the goods saved, or taken, from the wreck. If a ship receives any damage in her masts, sails or rigging, by stress of weather, or by lightning, it forms no case for contribution. Contribution, however, must be made, when the loss takes place, by the consent and with the consultation of the persons on board, with a view to save the ship, the goods, and their lives, by averting the danger which threatens them. Such is the regulation of the Roman law, to be found in law 2, § 1, and law 3 and 5, (lib. 14, tit. 2,) of the Digest, *ad legem Rhodiam de jactu*. The decisions of the Rhodian laws of the new code, are, in this case, directly the reverse, and require contribution to be made without distinction.

37. There is positive, and convincing proof, that these laws were not made, or copied from those of

Further proof that this collection of Rhodian laws is not genuine.

the ancient Rhodians, until after the establishment of Christianity; and I will assert further, that they belong to the times of the emperors who succeeded Justinian.

38. By one of the laws of this collection, it is ordered, that the crew and passengers in a vessel, as well as the owner, or the master entrusted with the management of her, are obliged to take an oath on the evangelists.(281)

39. This being an undoubted fact, it is not to be believed that any person can be found bold enough to maintain that the Rhodians were Christians, at the time when the Romans adopted their laws, though they should suppose, as Godefroi(282) has pretended, that the Romans did not adopt the Rhodian laws until the reign of Antoninus Pius; whence, I conclude with the strongest reason, if it be true, as has been shewn, that the Romans had adopted these laws under the emperor Augustus, that the gospel, which did not then exist, could not have been present to the minds of the Rhodians.*

(281) *Jus navale Rhod.* l. 15. *Apud Leunclav.* tom. 2, page 266, *edit. Franck.* 1596. *Exercitor et nautæ et vectores qui simul navigant jusjurandum evangelicum præstanto.*

(282) Godefroi, *de imperio maris. Dissert.*

* The English translator of the Rhodian laws, in the collection referred to in a former note, very easily gets rid of this objection, by saying, that the word *Evangelical* was added to this law by the christians.....T.

The pretended Rhodian laws were compiled subsequent to Justinian.

40. There is not a lawyer, or historian, anterior to the emperor Justinian, who has quoted, or referred to any Greek fragment of the laws contained in the manuscripts of Francis Pithou. Justinian himself, and his contemporary historians, make no mention of them; on the contrary, they all speak merely of the commentaries made by the Roman lawyers on the Rhodian law. I shall observe further, that in the pretended collection of the true text of these laws, this very Rhodian law itself is cited.(283) If these fragments had been taken from the original laws, if it were the Rhodians themselves who spoke, they certainly would not have said, in repeating an observation, *secundum legem Rhodiam*, but *secundum legem nostram*. So that there can be no hesitation in believing, that these Greek extracts, or fragments, found among the manuscripts of Pithou, and, afterwards, published by Leunclavius, Peckius, and others, do not belong to the true text of the Rhodian laws; but are merely some fragments of the maritime law that was observed under the Greek emperors, who succeeded Justinian, taken from the true text of laws which, perhaps, still existed, and to which the same respect was paid, as to those contained in the collection made by the order of Justinian.

(283) Leg. Rhod. apud Leunclavium. Loc. cit. n. 17. *Lex ita præcepit. Quæ in mari navigantibus credita sunt sub fidejussione ac sine periculo in scripturam ne referantur quod si confecta de iis scriptura fuerit* secundum legem Rhodiam, *irrita esto.* n. 18, *ib. Transactio de usuris,* secundum legem Rhodiam, *fiat.*

The Digest of Justinian does not contain the original Rhodian laws.

41. Does the compilation of Justinian, then, contain the original text of the naval laws of the Rhodians? A great many modern lawyers appear to have no doubts on the question; they believe, that the title, *ad legem Rhodiam de jactu*, was a Latin translation of the naval laws of Rhodes. This is an error easily corrected. By a slight examination of the fragments of which the title in the Digest *ad legem Rhodiam de jactu*, is composed, it will be seen that they are attributed to the lawyers Labeo, Paulus, Julian, Hermogenes, and others, who lived at different periods; and, if we further consider, that the heads of the Digest under which these fragments are arranged, are not entitled Rhodian laws, as they would have been, had they been originals, but are entitled, *ad legem Rhodiam*, we cannot believe, that they are any thing more than commentaries, composed by lawyers, upon the Rhodian law. Thus the title given to them in the Digest, indicates that they contain nothing more than the most important decisions of certain Roman lawyers, on various cases, which had been provided for by the true Rhodian law. The conduct of these lawyers, in this instance, is the same as has been observed by them in regard to other laws, which they have discussed, and about which they have reasoned without quoting the original text, and, consequently, without having preserved it.

42. It clearly follows from what has been said, that we do not possess the true text of the Rhodian

No existing collection contains the true Rhodian laws.

laws, neither in the Greek abridgements, collected by Leunclavius, and copied by Peckius, nor in the title *ad legem Rhodiam de jactu*, nor in any other Code which has been hitherto discovered. The collection of Pithou contains only some fragments of maritime law, which the emperors, after the death of Justinian, had decreed. We must, therefore, conclude, that the pretended Rhodian laws, comprised in the Greek collection of Michael Attaliates, de Psellus, and other works of the lower empire, which make a part of the *Jus Greco-Romanum*, collected by Leunclavius, and, consequently, the pretended collection so vaunted by modern lawyers, are apocryphal, and do not contain any of the genuine naval laws of Rhodes.(284)

(284) As Leunclavius, one of the editors, at the conclusion of these pretended Rhodian laws, quotes the opinion of Docimius, a lawyer of the lower empire, in which he decides in what cases the Rhodian laws ought to take place, I have conjectured this same Docimius to be the person who has forged them. I think also that the Glossarist on the eighth Canon, dist. 2, part 1, quoted by Gratian, on the *Decretals*, had in view this *farrago* of pretended Rhodian laws, when in speaking of the *Rhodian law*, he adds, *Iniquissima est illa lex; scilicet quia patientibus naufragium inhabitatores omnia auferant.* Vid. *Isid. Ibid.* c. 17.

The kings of Rome published no maritime laws.

ARTICLE III.

Of the maritime laws of the Romans, contained in the Digest.

§ 1. THOUGH maritime commerce was not the primary object of the wars undertaken by the Romans, as it was of those carried on by the Carthaginians; yet it is certain that by means of navigation they were enabled to make conquests, and to extend their empire on the sea. A nation that aspires to the empire of the world, cannot be ignorant how necessary riches are to the accomplishment of great designs, and that the most certain means of acquiring them is by commerce.

2. Shepherds or warriors, the Romans were at at first, less sensible of the want of laws than smitten with the love of conquest, or the useful attractions of agriculture. The laws made by their kings and consuls, had no relation to navigation. Those ascribed to Romulus, merely fixed the punishments of certain crimes, the ceremonies to be observed at feasts in honour of the gods, and the order which ought to prevail among the citizens.(285) Numa, who made agriculture a sacred duty, published no law in favour of commerce. This silence was imi-

(285) Dyonis. Halicarn. lib. 2, page 89, &c. Terrasson, in his *History of Roman Jurisprudence*, mentions a law made to interdict commerce, or at least to prohibit it to slaves. Part 2, cap. 8, p. 137.

Corn Magistrates, and a College of Merchants created, at Rome.

tated by his successors to the throne, and, for a long time, by the chiefs of the republic, after royalty had been proscribed in consequence of the cruel ambition of Tarquin.

3. The creation of prefects for furnishing corn was the most ancient establishment that appeared at Rome, on account of the supplies of grain obtained, at first, from Sicily and Sardinia, and, after the Punic wars, from Africa, and from Egypt, during the times of the first emperors, and, lastly, from Marseilles and Gaul, during the decline of the empire. About the year of Rome 259, was established the College of Merchants, called also the College* of *Mercurials*,(286) either because they met together in the vicinity of

* The term *Collegium* or *Universitas*, in the Roman law, means any kind of *Corporation*, for any purpose whatever. Their Corporations were all aggregate ; three persons at least were necessary to make a corporation. The powers, capacities, and disabilities of these Corporations, very nearly resembled those created by our laws.....T.

(286) The merchants of Rome formed a College, the creation of which was confirmed by the consuls, Appius Claudius, and Publius Servilius. Livy, lib. 2, cap. 27. "*Certamen consulibus inciderat, uter dedicaret Mercurii ædem.* Senatus a se ad populum *rejecit : utri eorum dedicatio jussu populi data esset, eum præesse annonæ, mercatorum collegium instituere, solemnia pro pontifice jussit suscipere.* The dedication of the temple of Mercury, mentioned in this passage of Livy, was made on the ides of May, in the year of Rome 259. The festival of the merchants was ever afterwards celebrated on the same day of the year. Rosin. *Antiq. Rom.* lib. 4, cap. 9. Alex. ab Alex.

the temple of Mercury,(287) or because the Romans regarded this divinity as the patron of commerce, as

Genial. dier. lib. 3, cap. 18. The epithet *merchant* was given to Mercury, as may be seen in the following inscription, preserved by Gruterus, p. 55, n. 1.

Mercurio. Negociatori
Sacrum.
Numicius Albinus, ex voto.

(287) The merchants from a hope of securing greater gains, afterwards sprinkled themselves with a branch of laurel dipped in the water of the fountain of Mercury, near the gate *Capena*. The ceremonial is described by Ovid, (Fasti. lib. 5, l. 671) addressing himself to Mercury.

Te, quicumque suas profitentur vendere merces,
Thure dato, tribuas ut sibi lucra, rogat,
Est aqua Mercurii, portæ vicina Capenæ:
Si juvat expertis credere, numen habet.
Huc venit incinctus tunicas mercator; et urna
Purus sufita, quam ferat, haurit aquam.
Uda fit hinc laurus: lauro sparguntur ab uda
Omnia, quæ dominos sunt habitura novos.
Spargit et ipse suos lauro rorante capillos;
Et peragit solitâ fallere voce preces
*Ablue præteriti perjuria temporis inquit.**

* The tenor of this supplication to the God, does not lead us to suppose that the merchants of those days were less ignorant of the arts of trade than those of modern times.

Ablue præteritâ perfida verba die
Sive ego te feci testem, falsove citari.
Non audituri numina magna Jovis.
. . . . . .
Da modo lucra mihi, da facto gaudia lucro;
Et face ut emtori dedisse juvet.

Commerce honoured by the Romans.

mentioned by Plautus, in the prologue to Amphitryon.(288)

4. Besides, it appears, that Rome held in high esteem those cities which were distinguished for commerce, or ship-building, or celebrated for any considerable sea-port. This, without doubt, induced her to adopt, the impression on her coins, of a prow, a Neptune, or a dolphin, as had been done by the Tyrians, Sidonians, Byzantines, the inhabitants of Leucate, Chelidonia, Syracuse, and of many other cities. It was from the same motive, that when fleets were sent, in the time of the republic, for the purpose of transporting supplies of provisions, she caused medals to be struck with the figure of the prow of a vessel, and this legend: *Ad coëmendum frumentum ex S. C.* The emperors who followed the same practice, put on their medals the figure of a vessel with the words, *Annona Aug.* or *Ceres Aug.* Many of this kind, struck in the reigns of Nero, and Antoninus Pius, are still to be seen.

The poet makes Mercury laugh at this request, conscious of his own want of honesty.

Talia Mercurius poscentem ridet ab alto
Se memor Ortygias surripuisse boves.....T.

(288) Plauti, Amphitruo. Prolog. Mercurius
Ut vos in nostris voltis mercimoniis
Emundis, vendundisque me lætum lucris.
Afficere, atque adjurare in rebus omnibus.

Increase and extension of the commerce of Rome.

5. When Egypt, after the battle of Actium, became a province of the empire, under Augustus, the commerce of Rome rapidly increased. This conquest brought opulence to Rome, and an abundance of grain was furnished from that fertile region. Egypt, at that time, kept up a communication with India by means of the commerce with that country, which had long been established by Ptolemy Philadelphus. At this period the Romans became as powerful at sea as they were on land.

6. When they adopted the naval laws of the Rhodians, the world had resounded with the fame of their maritime exploits. Great generals had appeared, and the union of all the treasures and talents of the age, had conferred on Rome every species of glory. The Roman Prætor, without the aid of the Rhodian code, had already provided, by a particular law, for some subjects of maritime dispute. The complaints made by passengers, and guests, of the tricks of mariners and hosts, had already come to his knowledge. These disorders would not have happened, if the masters of ships, and the innkeepers, had been people of good reputation, and incorruptible integrity ; but as these professions were at that time, regarded as the very lowest, they were exercised only by persons of bad character. These abuses the Prætor endeavoured to remedy by his edict, *Nautæ, caupones, stabularii, ut recepta restituant.* He gives to guests and passengers an action *de recepto*, arising out of the contract between them

First notice of ships and mariners in the Pandects.

and mariners and innkeepers, to recover whatever had been entrusted to their care. He gave, besides, a right of action, *ex quasi delicto*, against the same persons, by which they were condemned to pay double the value of the thing lost or stolen in the ship or inn.*

7. It is in the 9th title of the 4th book of the Pandects, that mention is made, for the first time, of ships and mariners. This subject, if we may believe Cujas and Heineccius, is misplaced, since the action *de recepto* does not belong to those *primordial* actions that must be prosecuted at law, and which Justinian promised to treat of in the first four books of the Pandects.† Tribonian, however, has thought proper to place it in this part, either on account of its resemblance to the preceding title, which treats of arbitrators who having accepted the arbitration, were bound to give their award, as Cujas supposes, or because Julian, in his perpetual edict, had brought together the edict *de receptis arbitris*, and that *de receptis a nautis, cauponibus, et stabulariis*, which is the opinion of Heineccius.

* The action *de recepto*, answers to our action on the case against *bailees*. The action *ex quasi delicto*, was a penal action, or rather, in this case, an action founded in *tort*, to recover double damages.....T.

† Justinian arbitrarily divided the Digest into seven parts; the first consisted of four books of what he called the *primordia*. See Taylor's *Elements of the Civil Law*, p. 21.....T.

8. The 9th title comprises seven laws: namely, three of Ulpian *ad edictum*, two of Gaius, on the provincial edict, and two of Paul, *ad edictum*. The title announces an intention to speak of the first part of the edict; but the last law further relates to a second law against the masters of ships. For this reason, Tribonian has been accused of negligence, either for not having given the edict of the Prætor entire, or, for having placed the last law under a title to which it did not belong.

9. At the beginning of the *fourteenth* book of the Digest, is the title *de exercitoria actione*. It treats of maritime contracts, in seven laws, two of them published by Ulpian, three by Paul on the edict, one by Gaius, on the provincial edict, and the last by Africanus, taken from the 8th book of his questions. In this last law it is enacted, that the owner of the ship, called *exercitor navis*, and who receives all the earnings for his own benefit, should be adjudged by the Prætor, to fulfil all the obligations contracted by the person, entrusted with the management of the ship, who is called *magister navis*, or master, whether they concern the freight, the purchase, or sale of the goods.*

* See note *ante*, p. 272. And he was not only answerable for the contracts of the master appointed by himself, but for the master substituted by that master, without his knowledge or consent. This Peckius thinks very strange, but the owner, according to Vinnius, has his remedy over against the first master, by an action *ex locato*, or *ex mandato*.....T.

The responsibility of ship-owners by the Roman law.

10. This title differs from the other, *Nautæ, caupones, stabularii, ut recepta restituant.* By that action the employer of a ship is bound to restore any article which has been entrusted either to him, or to those to whom he has confided the management of the vessel, and who have received it on board under a promise of safe-keeping. This decision is applicable to all who are on board of the ship; and it further directs that he shall be answerable *ex quasi delicto*, in double the amount, for all damages caused by the fault of any of the persons in his service.* By this law, the employer is bound by the contracts made by the master or captain of his ship, and for whatever relates to the objects for which the latter is employed.† This title is put in this place, according to Cujas, because Tribonian, having begun to treat of the actions which arise out of the different kinds of obligations, before passing to ano-

* By this must be meant the mariners or persons employed in navigating the ship. *Sed si cum quolibet nautarum sit contractum, non datur actio in exercitorem, quamquam ex delicto, cujusvis eorum qui navis navigandæ causa in nave sint datur actio in exercitorem. D.* lib. 14, tit. 1, l. 2.....T.

† The owner was not liable for every contract of the master, but only for such as related to the ship, and business entrusted to his management. *Non autem ex omni causa prætor dat in exercitorem actionem; sed ejus rei nomine, cujus ibi præpositus fuerit, id est, in eam rem præpositus sit; ut puta si ad onus vehendum locatum sit, aut aliquas res emerit utiles naviganti; vel si quid, reficiendæ navis causa, contractum vel impensum est; vel si quid nautæ, operarum nomine petent.* Dig. ib. l. 7.....T.

ther subject, was desirous, previous to concluding this part of his work, to speak of actions which might be brought against a person, in consequence of the obligations contracted by his agent, such as the *actiones exercitoriæ, et institoriæ,* and others of the same kind.*

11. Tribonian, in the first title of the 14th book, while speaking of the *actio exercitoria,* treats also of seamen. It is for this reason, perhaps, that he has introduced the Rhodian law *de jactu,* under the second title, though that was not its proper place. He there declares, that whenever, in order to save the ship or goods, it becomes necessary to sacrifice a part of them, by voluntarily throwing them into the sea, all the owners of goods laden on board, must contribute to such loss, and indemnify the person who has, by means of the *jettison,* procured the safety of all. This title comprises ten laws; namely, four of Paul, one of Papinian, two of Julian, one of Callistratus, one of Hermogenes, and another of Volusius Mecianus. This is all that the Pandects have preserved of the Rhodian laws.

12. Mention is made in the 22d book of the Digest of *marine interest,* or the contract of bottomry, under the title *de nautico fœnore.* This title comprises nine laws; namely, two of Modestinus, two of

* See Peckius *ad rem nauticam,* p. 69, *et sequ.* and the notes and observations of Vinnius.....T.

Paul, one of Papinian, one of Pomponius, one of Scævola, one of Ulpian, and one of Labeo. These laws allow a higher rate of interest for money lent on bottomry, than was permitted in cases of common loans, because the risks to which the lender is subject are infinitely greater than those in contracts made relative to loans on land.

13. In the 64th* book, is the 5th title, *Furti adversus nautas, caupones, stabularios.* It consists of one law of Ulpian, taken from the eighth book *ad edictum.* In treating, in this book, of private frauds and thefts, it was thought proper to point out those committed on board of ships, and which we call *barratry.*† The action is derived from the prætorian edict *in duplum;* it is general, and without exception, against all those employed on board of ships by the masters or owners, in all cases of thefts committed by them.

14. The 9th title of the same book, (47th,) treats *de incendio, ruina, naufragio, rate, nave expugnata.* It comprises twelve laws, namely, four of Ulpian, three of Gaius, two of Callistratus, one of Paul, one

* This title is to be found in the 47th book of the Digest.....T.

† *Barratterie.* The English word *barratry* is derived from the Italian *barratare,* to cheat, a term of barbarous origin. It signifies any fraud or cheating by the master or mariners to the prejudice of the owner. Emerigon, *des assurances,* tom. 1, p. 366. Marshal, vol. 1, p. 452. Guidon de la mer, chap. 9, § 1.....T.

of Neracius, and another of Marcianus. Against theft accompanied with violence, there was an edict *de vi bonorum raptorum.** It seems that, at that time, as well as at the present day, theft was considered more heinous, when the perpetrator took advantage of fires, shipwrecks, and similar accidents, for the more easy commission of the crime. To the punishment inflicted, the prætor added fourfold damages, if the action was brought within the year, and single damages after the expiration of that time.†

* Actions for theft were given by the Roman law in many cases, for taking or detaining the goods of another, which, in the English law are considered not as crimes, but as *torts*, for which a civil action of trover, or trespass on the case, would lie against the wrong doer. Inst. lib. 4, tit. 4, § 6.....T.

† The Roman laws gave actions for single, double, triple, and quadruple damages. In manifest theft, where the party is apprehended with goods, or taken in the fact, fourfold damages are given; in those of theft *not manifest*, double damages. Inst. lib. 4, tit. 6. Peckius seems to have some doubt whether the *quadruplum* meant fourfold the value of the thing stolen, or in what other method it should be estimated, and observes, that there are as many opinions about it as there are heads, and, as Terence says in his Phormio, of three lawyers who were consulted, one answered in the affirmative, another in the negative, and the third took time to consider. Peckius, *ad rem nauticam*, p. 304. But from the terms of the law *de vi bonorum raptorum*, Inst. lib. 4, tit. 11, it seems pretty certain that the value of the thing was the ratio of calculating the damage. It is true, that in this case, the thing itself is included, and therefore it amounts to no more than a triple penalty. But these actions of theft for double or quadruple damages, did not take away the right of the party to bring his action to recover the thing itself,—(*condi-*

ARTICLE IV.

Of the Maritime Laws contained in the Theodosian Code.

§ 1. BY a law of the 15th January, in the year 438, Theodosius II. published his Code, which comprehended a collection of all the laws enacted, by the lawful emperors who preceded him. Correctly speaking, it is the first body of laws possessed by the Roman empire. The Codes of Hermogenes, and of Gregorian, already existed; but they were never clothed with the sanction of sovereign authority, that could alone render them authentic, and make their observance obligatory on the people.(289)

2. This Code, which has been commented on by the celebrated Godefroy, though compiled by Theodosius antecedent to the reign of Justinian, has not obtained the respect that has been shown to the se-

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tionis) against the thief himself, or his heir, or the action *(vindicationis)* against whoever had the possession of the thing stolen, lib. 4, tit 1, § 19.

(289) This Code, in all the editions, is dated in the 15th consulate of Theodosius, which corresponds with the 435th year of the Christian æra; but it contains laws which were not made until a year after. It is, therefore, necessary, instead of the 15th, to read the 16th consulate, agreeing with the year of Christ 436.— It appears, from this date, that the publication did not take place until two years afterwards.

Difference in the titles in the Codes of Theodosius and Justinian.

cond.(290) Justinian, however, took many titles and numerous laws from the Theodosian Code. The 16th title of the 7th book corresponds with the 45th title of the 12th book of the Code of Justinian, which treats *de littorum et itinerum custodia.* It contains three laws of Honorius and Theodosius. By the first, Honorius abolishes the guard established for the shores and ports, by Stilicho, who prohibited persons going from the east to the west. By the second, he ordered the military ports to be maintained to guard the coasts, ports, and islands, within the eastern empire, in order to prevent the barbarians who ravaged the western empire, from opening a passage into the east. In the third, Theodosius prohibits the carrying of merchandise among the barbarous nations, and prescribes the conduct to be observed by the commanders of ships when they leave port.

3. The 17th title, treats *de lusoriis Danuvi,* or *Danubii.* This title is not found in the Code of Justinian. *Naves lusoriæ* were armed vessels, which

(290) The Theodosian Code, received and observed until it was abrogated by that of Justinian, is a precious monument of the industry and care taken by that emperor to save and preserve the Roman jurisprudence, which was entirely unknown at Rome, after Honorius had transferred the seat of government to Ravenna to live there in idleness, and had left Rome and all Italy a prey to Alaric, king of the Goths. It was owing to that cause that those nations entirely subverted the Roman jurisprudence, and subjected the conquered countries to their own laws.

sailed along the rivers which divided the Roman empire, for the purpose of restraining the privateers of enemies, as well as to cruise for themselves. Some of them were stationed in the Rhine, which separated the empire from Germany; others on the Meuse and Danube, which divided the empire from Scythia. In this one law, Theodosius regulates the number of ships destined to guard the confines of the empire, and those which are to be put into service each year, as occasion may require.

4. The 12th title of the 10th book treats *de classicis*. The same law is given by Justinian, in the 13th title of the 10th book of his Code,* of which having spoken in the next article, it is unnecessary to say more concerning it here.

5. The 5th title of the 13th book treats *de navicularii*s, in the same manner as Justinian has done; but the latter has comprised the subject in six laws; while Theodosius has expanded it into thirty-eight. Sixteen of these laws grant various privileges to the masters of ships employed as public transports, the others contain some regulations for the prevention of frauds.

6. The next title treats *de prædiis naviculariorum*. This has also been adopted by Justinian in his Code.

* The title *de classicis* is the 12th of the 11th book of the Code of Justinian.....T.

It contains only three laws; while the same title in the Code of Theodosius comprises sixteen. The purport of it is, that the estates of mariners, sold, or passed into foreign hands, by any title whatever, shall remain subject to the same obligations as when they belonged to the mariners.

7. This title is followed by a second, *de navibus non excusandis*, which corresponds with that pointed out in the Code of Justinian. It contains two laws, both of Honorius and Arcadius, while one of those of Justinian bears the name of those emperors, and the other of Theodosius and Valentinian.

8. The 8th title, *ne quid oneri publico imponatur*, contains the same law of Arcadius, which was transcribed by Justinian into his Code, under the same title.

9. The 9th title treats of *shipwrecks*. It comprises six laws, almost all of which were adopted by Justinian, and for that reason I shall forbear any examination of it.

10. The twentieth title of the 14th book of the Theodosian Code, *de pretio piscis*, is not to be found in that of Justinian. It contains but one law, and that by Theodosius and Honorius. The purveyors for the imperial table, called *ministeriales opsonatores*, purchased fish at excessive prices; but the fishermen

finding themselves not paid by those whose office it was to supply the imperial table with that article, complained to the emperor on that subject, who, to put an end to all complaints, fixed by law the price of fish.

11. The subsequent title, *de nautis Tiberinis*, is the same as that given in the Code of Justinian, and contains, in fact, the same law.

12. Justinian did not think proper to comprise in his Code, the 22d title of the Theodosian Code, *de saccariis portus Romæ*. At the distance of eighteen miles from Rome was a port, to which was brought from the provinces, all the wheat destined to furnish bread for that city. The *horreum*, or public granary was there erected, in which corn was kept, until it could be transported to Rome. At this port was established a corps of *boatmen*, *caudicarii*, sailors of the Tiber, or *navicurii*, who carried the grain to Rome. The people whose business it was to measure the corn deposited in the granaries, were called *mensores portuenses*. There were besides workmen, termed *fabri navales portuenses*, of which mention is made in an ancient inscription found at Ostia;(291) and, lastly, the *scaccarii*. These were employed to carry, in bags, all the goods which arrived in the port, for fixed wages. The

(291) The following is the inscription, mentioned by Gruterus,

The Scaccarii, or bag-men appointed by law to carry goods at Rome.

emperors Valentinian and Valens by the law, which constitutes this title, ordered, all merchandise, belonging to individuals, arriving at this port, to be transported by the *scaccarii* or bag-men, belonging to this company, under the penalty that whoever employed other persons, should forfeit a fifth part of the merchandise. Such was the privilege granted to a company, considered so necessary to the republic.

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page 437, n. 2. said to have been at Ostia on the base of a statue; as I was informed by the Abbè Charles Fea,* my learned friend, and a celebrated antiquarian at Rome :

P. MARTIO. QUIR.
PHILLIPPO.
CURATORI. VIÆ. PRŒNESTINÆ.
ÆIDILICO. CURULI. V. Q. A. B. ERARIO.
FABRUM NAVALIUM.
CORPUS. FABRUM. NAVALIUM.
OSTIENSES. QUIBUS. EX. S. C. COIRE. LICET.
PATIONO. OPTIMO.
S. P. P.

.....

* M. Abbe Fea has lately been appointed by the Pope, Commissary general and President of the Antiquarians in the States of the Church.

ARTICLE V.

Of the Maritime Laws contained in the Code of Justinian.

§ 1. THE Code of Justinian,(292) contains some maritime regulations. It is necessary, therefore, to give an account of the titles to be found in it relative to this subject. The first which offers is the 25th title of the 4th book *de institoria et exercitoria actione.* The nature of the *actio exercitoria*, has been explained in the Digest. Under this title, which contains six laws, is the fourth, published by Diocle-sian and Maximin, which speaks of this action. It directs, that the obligations contracted by the master or patron of a vessel, appointed by a woman, should be binding on the owner in the same manner as by the *actio institoria.** Cujas, in his *Paratitles*, has

(292) Justinian illustrated the Roman jurisprudence in the Code of laws which bears his name, and which he published in 529, and again in 533 : he added afterwards, the *Digest* and *Institutes*. The last edition of them was given in 534, which has been preserved to the present day. A considerable time afterwards, the Novels were subjoined, a collection containing 163 Constitutions, and 13 Edicts of Justinian. All these works, though in some respects defective, have justly conferred on this emperor, the title of the restorer of Roman jurisprudence. It is true that Tribonian, Dorotheus, Theophilus, and other learned lawyers, contributed to their perfection.

* In the cases where a master had given to a slave, or other person, the management of a ship, a warehouse, or of any particu-

explained in what these two actions agree, and how far they differ from each other.

2. In the 33d title of the same book, *de nautico fœnore*, we find four laws of Dioclesian and Maximin. They contain regulations similar to those already mentioned in the Digest, or Pandects.

3. The 62d, or last title of the 6th book, treats *de hæreditatibus, decurionum, navicularium, cohortalium, militum, et fabricensium.* For each of those objects there is a particular law, making five in the whole. They direct, that when any person dies intestate, and without lawful heirs, the property of the deceased should not go to the public exchequer, but to certain persons, societies, or corporations. Thus, by the first law of the emperor Constantine, if a ship-owner die intestate, and without heirs, the corporation of ship-owners succeed to his estate, to the exclusion of the exchequer. The prefect of provisions is charged with the execution of this law, because, as Cujas observes, the corps of ship-owners, whose business it was to transport the necessary supply of provisions to Rome, were under the inspection and controul of that magistrate.

4. The 11th book of the Code is entitled, *de na-*

lar affair, by which third persons have been induced to enter into contracts with such agent, the prætor has given the *actio institoria*, to enforce the contract against the master. Inst. lib. 4, tit. 7, § 2.....T.

Private ships bound to transport public property.

viculariis, seu naucleris publicas species transportantibus. The first title comprises six laws; one of Constantine, two of Arcadius and Honorius, one of Honorius and Theodosius, and two of Theodosius and Valentinian. The *navicularii*,* or ship-owners, formed at that time a kind of college or corporation, whose office it was to transport the goods of individuals; but they were obliged also to receive on board from the provincial administrations, wheat, barley, oil, wine, and money, to carry to the city, or to the military encampments. In these laws are pointed out their privileges, duties, faults and punishments.

5. The next title is *de prædiis et omnibus rebus navicularioram.* It contains three laws, one of Valentinian and Valens, another of the same emperors

* Azuni translates *navicularis*, patron, or master, and Molloy, in his treatise *de jur. maritim. et naval.* lib. 2, ch. 3, § 1, understands it in the same sense. But it appears from the note on this title of the Code, that *navicularis, nauclerus,* and *exercitor,* have the same signification, and mean the owner, or employer of the ship, the person who lets out the vessel for hire, and receives the earnings, and who is said *navicularium artem exercere.* See Peckius *ad rem nauticam*, p. 377, and Vinnius, *Comment.* ibid. *Navicularii sunt ad quos quotidianus quæstus navium, sive propriarum sive conductarum pertinet.* Yet, in some places, as in the law *de naufragiis,* it signifies the person who has the command or management of the ship. Loccenius, *de jure maritimo,* lib. 3, cap. 8, calls the *exercitor navis,* in the German language Schiffs-freunde, *qui quæstum ex navi exercent, vel ad quos obventiones et reditus navis perveniant, sive domini navis sint, sive per aversionem à dominis conduxerint, vel ad tempus vel in perpetuum*.....T.

and of Gratian, and a third of Arcadius and Honorius. The ship-owners, at the time of supplying provisions and of transporting other public goods, made a bargain with the exchequer and its agents, by which they bound themselves to carry them to the place of their destination. It resulted from this contract, that all the estates of the ship-owners, either by an express, or tacit hypothecation, were bound to the exchequer for the true performance of the contract. The different effects of this hypothecation are explained under this title.

6. The owners of vessels, being thus obliged to transport the supply of corn and other articles to Rome, as well as arms and soldiers to the armies, it sometimes happened, that they had not a sufficient number of ships for the purpose, as, in such circumstances, masters of vessels took care to keep out of the way, so as not to be compelled to the performance of this duty. A law, title 3, *de navibus non excusandis*, was therefore passed, declaring that all ships of the burden of two thousand measures of corn, in case of necessity, might be forced into this service, without regard to any privilege of exemption they might claim. Under this title is comprised two laws: one of Arcadius and Honorius, the other of Theodosius and Valentinian.

7. It was prohibited to load any goods belonging to individuals on board of vessels employed by the government. This law not being carried into ef-

Private goods could not be laden on board of transports.—Shipwrecks.

fect, the emperors Arcadius and Honorius were induced to make another, which appears under the 5th title, of the same book, *ne quid oneri publico imponatur*, by which it was ordered, that no person should load his private goods on board of vessels laden with the goods of the republic; and in case of shipwreck on account of the vessels being overladen, besides reimbursing the amount of damage sustained, the transgressor of this law was liable to corporal punishment.

8. At the head of the 6th title, *de naufragiis*, we find an excellent law of Antoninus;* the second is of Valentinian and Valens, the third is of Valentinian and Theodosius, the fourth of Valentinian, Theodosius, and Arcadius, and the fifth and sixth by Theodosius and Honorius. The title sufficiently explains their object.

* This law bears the name of the emperor Constantine. Vinnius, in a note on Peckius, p. 390, is inclined to believe with Contius, Gothofredus, Salmasius, and others, that this law ought, according to some ancient manuscripts, to be ascribed to Antoninus. The words of this excellent law, as it is called, are, *Si quando naufragio navis expulsa fuerit ad litus, vel si quando aliquam terram attigerit, ad dominos pertineat, fiscus meus sese non interponat. Quod enim jus habet fiscus in aliena calamitate, ut de re tam luctuosa compendium sectetur?* The concluding interrogation does honour to the humanity of the emperor. By the common law of England, until altered by Henry I. goods wrecked belonged to the king.—Blackstone's Commentaries, vol. 1, p. 290.....T.

9. There is a further point in relation to these subjects to be found in the law, tit. 12, *de classicis*. Cujas and Godefroy maintain that the *Classici*, were soldiers appointed to cleanse rivers, and to perform other services for the public. Perezius,* on the contrary, affirms, and it seems to me with more reason, that they were soldiers attached to the particular service of defending the maritime armies from the incursions of enemies. This title consists of one law only, by Valentinian and Valens. The execution of it is confided to the prefect of the east. He is ordered to increase the number of the *Classici, ex Incensitis et Adcresscentibus*, who were the sons of the rowers and of the *Classici*, who had already learned the occupation of their fathers.

10. It had been decreed, as was before mentioned in speaking of the title *de navibus non excusandis*, that all vessels were bound to transport the goods belonging to the state, the masters of which were obliged, whether willing or not, to hold themselves in readiness to perform a service essential to the public interest; but as it mentions only sea-vessels, and particularly such as were of the burden of two thousand measures of wheat, it might be doubted, whether it'

* Anthony Perezius, was born at Alfaro, a small town in Upper Navarre, in 1583, and died in 1672. His *Prelections*, or *Commentaries* on the twelve books of the Code, were published in 1651. The author read them in the college of Louvaine, in Austrian Bra-

Vessels of the Tiber not excused from public services.—The novels.

was meant to include in these regulations those small vessels which frequented the Tiber, and were chiefly employed in transporting to Rome the grain brought by larger vessels to the mouth of the river, from Egypt, Sardinia, and Sicily. These vessels, in consideration of the services rendered to the capital, might reasonably claim to be exempted from every other requisition. This appears to be the cause of the law of Valentinian and Valens, *de nautis Tiberinis*, found in the 27th title of the 11th book.* It declares, that none of those who own vessels navigating the Tiber, shall be exempted from the public services.

11. The *novels* of Justinian, which are the last constitutions made by that emperor, after the publication of his second Code, and which compose the fourth and last part of the Roman civil law,(293)

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bant, where he filled the chair of a professor of law for 50 years. A new edition, in two vols. 4to. was published at Antwerp in 1737. His works are considerably esteemed.....T.

* The law is the 26th title of the 11th book.....T.

(293) Some commentators have asserted, that these Constitutions subsequently enacted by Justinian, were called *Novels*, because they established a new law, contrary to the law of the Digest and Code; but this opinion is not maintainable, since all the Novels are not contrary to the laws of those two collections. It may be said, with Cujas, that they have been so called, *quasi novæ constitutiones, et post Codicam Justiniani repetitæ prælectionis promulgatæ.*

contained some further regulations as to marine interest. The novel 106, approves of the different usages in force, agreeably to which the creditor might receive more than 12 per cent. interest from his debtor; which was regarded as lawful interest in contracts of bottomry. But by the novel 110, Justinian, in repealing the regulations of the law 106, prohibits all persons, from receiving, under any pretext whatsoever, a higher rate of marine interest than 12 per cent. These *novels* are the only ones of Justinian relating to maritime affairs.

12. The *authentic** *navigia*, and the constitution of the emperor Frederick,† *de statutis, et consuetudinibus, contra ecclesiam libertatem editis tollendis*, placed in the Code under the title *de furtis*,‡ decrees, that the ships and goods of merchants driven by tempests, or experiencing any other misfortune, that should be brought to shore in any part of the empire, shall remain the full and perfect property of those to whom they belonged, before the

* Gibbon translates *novellæ*, which he terms "a classic adjective, but a barbarous substantive," *novels*. It may be allowed, according to the example of this elegant historian, to translate *authenticæ* by a word equally bald. The *Authenticæ, seu novellæ constitutiones*, of Justinian, are divided into nine Collations, containing 50 titles.....T.

† The constitutions of Frederick are to be found after the *Consuetudines Feudorum*, in the *Corpus Juris Civilis*.....T.

‡ See Code, lib. 6, tit. 2.

accident, unless they should be enemies of the emperor, or pirates, under the pain of a forfeiture of all the transgressor's goods, and other arbitrary penalties. Every one knows in what manner that constitution became inserted in the Code, and for what cause, thirteen constitutions of the two imperial Fredericks, are also found there.*

ARTICLE VI.

Of the Maritime Laws contained in the Basilica.

§ 1. AFTER the example of Justinian, the emperor Basil, in 877, published a compilation of laws in forty books. Leo VI. his son and successor, added twenty more, all which laws are known under the name of the *Basilica*, and were the basis of the jurisprudence of the Greek empire, until its final destruction.

2. This compilation, published at Paris, in 1647, by Charles Annibal Fabrot, contains, in the 53d

* The Pandects were discovered a short time before Frederick I. invaded Lombardy; the history of the transaction of the two Fredericks, and the use they made of the Pandects and Code of Justinian, may be found in Giannone's *Istoria Civile del regno Napoli*, vol. 2, lib. 12, cap. 1. Lib. 13, cap. 3, § 1, 2, *et* 3. Lib. 15, cap. 3, 4. Lib. 16, 17.....T.

book, several maritime laws, comprising six titles, on this subject.

3. The first is, *De nauticis obligationibus, et omnis generis actionibus, quæ nomine navium, et omnium in eis navigantium, exercitorum, magistrorum, nautarum, mercatorum, reliquorumque, vectorum instituuntur, et de naufragio.* This title includes five laws taken from the Digest, and Code of Justinian. The first is the same with that of Ulpian, and found in the Digest, under the title of *nautæ, caupones, stabularii.* The second is by the same lawyer, and taken from the first law of the title, *de exercitoria actione.* The third is of Paulus, and founded on the 6th section of the 26th law *mandati,* in the Digest. The fourth is of Ulpian, from the 11th law of the Digest, lib. 47, tit. v. *furti adversus nautas.* And the fifth is the *fourth* law of the Code, *de institoria, et exercitoria actione,* lib. 4, tit. 25.

4. The second title is, *de nave vindicanda.* It comprehends three laws of Ulpian, which are, § 1, law 13, lib. 19, tit. 2. of the Digest, *locati;* law 27, § 15, digest, lib. 9, tit. 2, *ad legem aquiliam;* and law 29, § 1, of the Code. The fourth is that of Labeo, and is extracted from the law 29 of the Digest, *de instrumento legato.*

5. The third is, *de naufragio, et jactu, et collatione.* It contains several laws: the first and second, of Paulus, taken from laws 1 and 7 of the Di-

gest, *ad legem Rhodiam;* the third and fourth are of Julian, taken from law 6; the fifth, of Paul, taken from law 7; the sixth is of Julian, taken from law 8; the seventh, of Ulpian, taken from law 43, § 6, of the Digest *de furtis;* the eighth, of Javolenus, taken from law 21, § 1, Digest *de acquirenda possessione;* the ninth, of Ulpian, taken from law 7, and those which follow in the Digest, lib. 47, tit. 9, *de incendio,* &c.; the tenth, of Caius, taken from law 1, Digest *ad legem Juliam de vi privata;* and the last, of Caius, *de incendio, &c.*

6. The fourth title is, *de nautico fœnore,* and contains the law of Pomponius, l. 24, § 3, Digest, lib. 31, *de legatis,* 1.

7. The fifth title, *de nautico fœnore,* is composed of five different laws: the first of Modestinus, taken from law 1 of the Digest, lib. 22, tit. 2, *de nautico fœnore;* the second is the 26th law of lib. iv. tit. 32, of the Code *de usuris;* the third is the second law of lib. iv. tit. 33, of the Code *de nautico fœnore;* the fourth is of Ulpian, and is the 5th law of the Digest, lib. xx. tit. 3, *qui potiores in pignore;* and the fifth is also of Ulpian, the 6th law, § 1, of the same title in the Digest.

8. The sixth title is, *de piscatoribus, et de piscatione, ac de jure maris.* This title contains a single law of Ulpian, taken from the 13th law, § 7, lib. 47, tit. 10, of the Digest *de injuriis.*

9. The eighth title contains forty-eight chapters, which compose the supposed law of the Rhodians. There are four laws; one taken from the second title of the 11th book of the Code; the other from the fifth title of the same book; the third and fourth, from the 1st title of the 12th book, and from the 9th title to the 14th of the 47th book of the Digests, in which more is said of maritime laws.

ARTICLE VII.

Of the Laws promulgated by the Emperor Leon.

§ 1. THE laws and constitutions of the emperor Leon, mentioned in the preceding article, some of which relate also to maritime subjects, merit further notice.

2. The 56th constitution repeals the 7th section of the 13th law of the Digest, *de injuriis, et famosis libellis*, and fixes the nature of the action, which the owner of lands, situate along the sea, may have to prevent persons from fishing within the bounds of his property. It gives to every lawful owner of such land, the right of prohibiting any person from fishing on the banks belonging to him, without his permission.

3. The 57th constitution prescribes the distance into the sea, at which the fishermen may mutually

fix their stations, and which is at 365 Roman paces.

4. The 64th constitution annuls the 3d law of lib. 48, of the Digest *ad legem Corneliam, de sicariis*, which condemned to death those who secreted effects belonging to a wreck, and commutes the punishment of death for a fine of fourfold the value of the goods.

5. The 102d constitution directs, that if any person is desirous of occupying a station for fishing, and has not land sufficient for that purpose, he may compel his neighbour to enter into partnership with him, and to cede to him as much land as he wants.

6. The 103d constitution declares, that in case of such partnership, the person who has thus ceded a small portion of land, shall share an equal proportion of the profits of the fishing with him who has ceded a larger portion, because the gain is not, in this case, produced by the greater or less quantity of land occupied in the fishery, but by the industry and labour of the fishermen. The well known principle of partnership, that the profits must be divided between the partners in proportion to the capital which each has put into the partnership stock, does not apply to this case.

ARTICLE VIII.

Of the Laws of the Consolato del Mare.

§ 1. AFTER the Greek and Roman, the most ancient and the most celebrated laws, relative to commerce and navigation, are those contained in the Collection, so well known, under the title of *Il Consolato del Mare.*

2. From its first publication, the *Consolato del Mare* became the common law of all the commercial nations in Europe, who submitted to its authority, because it comprised all the laws and usages of maritime cities. For this reason, it was universally adopted and respected as an invariable law, calculated to maintain plain dealing, and good faith, in all commercial transactions.(294)

3. After the most irrefragable evidence of the high respect, in which the *Consolato del Mare*, has been held at all ages, it is easy to see how unfounded are the censures cast on this Code by Hubner, in his book, *de la saisie des bâtimens neutres.* He calls it a shapeless mass, and ill-digested collection of maritime, and positive laws, and of the particular or-

(294) Vinnius ad Peckium, in lege 1, Dig. *ad legem Rhodiam.*—Card. de Luca, *de Credito,* disc. 107, n. 6.—Casaregis, *de Commercio et Merc.* disc. 4, n. 14, disc. 6, n. 14; disc. 19, n. 3, and disc. 213, no. 11 and 12.—Lubeck, *de jure avariæ,* p. 110.—Targa, *Ponder. Maritime,* cap. 96, § 3.

Ill-founded opinion of Hubner concerning this Code.

dinances of the middle and dark ages, mixed with a compilation of local adjudications. "These ordinances," says he, "may bind the subjects of those who made them; but, as they are only particular regulations, their authority extends no further; they have now become obsolete, and are no longer binding on any person."*

* Hubner, *de la saisie des bâtimens neutres, déscours preliminaire*, p. 11. His words are, "J'ai mis au rang de masses informes dans cette partie, le livre intitulé, *Le Consulat de la Mer*, qu'on allegue quelquefois comme une autorité, quoique ce ne soit qu'un amas, ou un recueil assez mal choisi, de loix maritimes et positives, et d'ordonnances particuliers du moyen âge, ou de siecles peu eclairés, jointes à une compilation de decisions privées..... comme elles ne sont particulieres, elles m'ont jamais pu obliger qu'eux, et comme elles sont actuellement surannées, elles n'obligent pas personne. Pour ce qui regarde les decisions, elles ne me paroissent absolument bonnes à rien dans la pratique; surtout n'etant pas seulement motivées, ni même faites dans un temps, où l'on scût ce que c'est qu'un commerce intelligent, ou la manutention d'icelui."....T.

Against this opinion of Hubner may be cited Casaregis, Emerigon, Valin, and the authors mentioned in this learned disquisition of Azuni concerning the origin of this celebrated Code. Emerigon has probably touched the true spring of this petulant decision of Hubner. "Cet auteur," he says, "ayant trouvé, dans le chapitre 294, des decisions contrairés à son systeme, a été de mauvaise humeur contre l'ouvrage entier; mais s'il l'eut examiné avec quelque soin, il se seroit convaincu que les decisions qui le Consulat renferme, sont fondées sur le droit des gens. Voilà pourquoi elles réunirent les suffrages des nations; elles ont fourni une ample matiere aux rédacteurs de l'ordonnance de 1681; et malgré l'ecorce gothique, qui les enveloppe quelquefois, on y admire l'esprit de justice

Unworthy motives of Hubner in his censure of the Consolato del Mare.

4. It is easy to perceive the weakness of those motives which induced him to oppose the general opinion, and that admiration of the spirit of justice and

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et d'equitè qui les a dictées."—*Traité des assurances, preface, p.* 8.

In speaking of the different collections of laws made use of in compiling the celebrated Marine Ordinance of France, Valin remarks, "Apres les loix Romaines les plus anciennes, comme le plus fameuses, que l'on connoisse sur le fait de la navigation et du commerce maritime, sont celles comprises dans une collection qui a pour titre, *il consolato del mare*, &c. C'est une compilation des anciennes lois maritimes, servant à regler la police de la navigation, et tout ce qui appartenoit alors au commerce dans le mer du Levant." He adds, that the original work being a mixture of Spanish, Catalonian, and Italian, he has never seen, but only that of Venice in 4to, in 1576, and another in 1559. Hubner says he never saw the original work in the Catalonian language, but that a translation of it had been made into Castilian by Francisco Biaz Romano, printed at Valencia in 1539, and the Venetian edition of 1576. It is from the Italian editions, that Casaregis has taken his text, which he has illustrated by a valuable commentary. The title of his work, which I have examined, is, *Il Consolato del Marc, colla Spiegazione di Giuseppe Maria Casaregi, Auditore della Rota Florentina, e Consigliere di Giustizia di S. A. R. In questa prima Veneta impressione oltre tutto ciò che s'attrova nell' edizione di Firenze, e di Lucca aggiontivi molte Leggi della Serenissima Repubblica Venezia attinenti alla materia. Con il portolano del Mare. Venezia* 1737.

There appears to be no English translation of the *Consolato del Mare*. Dr. Robertson has published a translation of some passages, particularly the 273d chapter. Some wretched translations have been made into French, in mentioning which Valin observes, "it is a pity that a collection so valuable and so useful to all those

Emerigon and others refute the opinion of Hubner.

equity which dictated the laws to be found in the *Consolato del Mare*. He is justly reproached by *Emerigon*, in the preface to his treatise on *marine assurance*, that, because he found in the 274th chapter* of the *Consolato*, a decision contrary to his own system, he became irritated against the whole work; but had he read it with attention, he would have been convinced, that the doctrines it contains, are founded on the law of nature and nations, and deserve the respect of the most civilized states. Such, also, is the opinion of the most celebrated writers on maritime subjects.(295)

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who are led to the study of maritime laws, has not hitherto met with a better translation;" and he adds, "that a celebrated lawyer (Emerigon) had commenced a new translation enriched with notes, to illustrate the text, and with observations relative to the regulations of the ordinance, and the existing usages of commerce."—Whether this translation was ever finished by his learned, liberal, and candid friend, I have not been able to learn. Considering the importance attached to this celebrated work, by all the maritime courts of Europe, it is to be wished, that Dr. Robinson would give an entire translation of it into the English language.....T.

* This in some editions is the 273d, and in others, the 275th chapter.....T.

(295) Vinnius, in Peck. ad leg. 1, *de lege Rhodia*, Dig. p. 190, speaks in these terms: *Apparet quoque ex scriptoribus, quæ Hispanis, quæ Italis, Gallis et Anglis, bonam partem legem, quibus hodie ad res maritimas utuntur, dempromptam esse ex libro consulatus, qui ætate S. Ludovici scriptus dicitur.* Casaregis, *de Commercio*, disc. 213, n. 12. also observes, *Consulatus maris in materiis maritimis,*

The Consolato contains the best maritime laws of the age.

5. The language used by some learned christian bishops to the emperor Julian, the apostate, might be applied to Mr. Hubner. That prince, speaking with contempt of the doctrine of Apollinaris, they answered, "*You have read, but you have not understood; for, if you had understood, you never would have censured him.*"*

6. The *Consolato del Mare* comprises 294 chapters. From the 1st to the 44th chapter, it treats only of the forms of judicial proceedings in the court, and by the consuls of Valencia.(296) In the subsequent chapters will be found the best laws that existed, and which were settled, at the time, by men of great experience, and consummate prudence, who, with no other guide than reason and custom, made those excellent regulations concerning naviga-

tanquam universalis consuetudo habens vim legis, inviolabiliter attendenda, est apud omnes provincias et nationes. Lubeck, *de jure avariæ*, p. 110, says also, *Cæterum omnium fere gentium leges et consuetudines maritimas collectas, et in cæteris capitibus dispositas, videre licet, in elegantissimo libro, qui vocatur* Consulatus Maris, *ex lingua Italica in Belgicam translatus.*

* *Legisti, sed non intellexisti; si enim intellexisses, non improbasses.* Apollinaris was bishop of Laodicea. He maintained the doctrine of the divine incarnation. See *Mosheim's Ecclesiastical History*, Vol I. p. 422.....T.

(296) In quoting the Consolato, I have followed the edition of Venice, with the explication of Casaregis, printed in the third volume of his works, *in folio.*

Origin of the name Consul among merchants.

tion, and maritime contracts. As we proceed in the examination of this valuable book, we observe in what manner the master or captain of a vessel ought to conduct towards his sailors, the passengers, the owners of the vessel and the cargo, and what are their respective obligations towards each other.

7. The name of consul, so common among the Romans, was given, in the times of low Latin, and during the middle ages, to different magistrates of other nations. This appellation was conferred more particularly on those persons who, in seaports and large commercial places, were appointed to defend and protect the rights and property of merchants, settled, or residing in foreign countries. A charter of James, king of Arragon, in 1268, by which he grants to the inhabitants of Barcelona, the power of choosing *consuls* in countries beyond sea, alludes to this title.(297) Guido, king of Jerusalem, about the year 1190, had already given to the people of Marseilles, the right of electing at Accon, *viscounts*, or *consuls*, of their nation, before whom all disputes arising between them and foreigners, were to be brought for decision. Ducange, in his *glossary*, at the word *consul*, makes the same remark, and cites, in proof, the *Consolato del Mare*, printed at Venice, in 1576, in the Italian language. He relates, that the magistrate of Pisa, who resided

(297) *Collection. Diplomat. Espanola*, n. 240, p. 360.

at Constantinople, was called *consul*, and at Venice, *bajolo*.(298) It may be seen, besides, in the chronicles of Pisa, that there existed, before the tenth century, a supreme magistracy in that republic, under the name of *Consuls*, or *Consuls de l'art de la mer*.

8. Among the Saracens, the admiral was the supreme director of every thing concerning the marine, or naval armaments. This dignity was, at that time, termed the *consulate*, and we find in the eulogy of *Toledo*, that this expression is used in the same sense.

9. In turning over the laws of the Visigoths,(299) it will be seen that the controversies which arose among foreign merchants, were decided by their own judges, called at that time *Tolonarii*, or the *Bailiffs* and *Priors* of merchants.(300) In the commercial towns of the Hanseatic confederacy,

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(298) *Charta Guidonis Regis Hierosolym. anni* 1190, *apud Guesnejam in Annalibus, Massil.* Codinus *de officiis,* cap. 7. n. 9, and Gregoras observes, *Pisanorum magistratum qui Constantinopoli degebant* Consulem *appellatum, qui apud Venetos* Bajulus *dicebatur.*

(299) Lib. 11, tit. 3, § ibid. *Si transmarini negociatores, inter se causam habuerint, nullus de sedibus Visigothæ regum eos audire præsumeret, nisi tantum modo suis legibus audirentur apud Tolonarios suos.*

(300) Marquardus, *de Jure Mercat.* lib. 3. cap. 4, n. 16.

The word consulate, denotes the jurisdiction, the laws, &c.

they were called Lords.(301.) Dusfrene(302) observes, that formerly in France, among the dignities of the palace, was one called in Latin, *Mercati Palatii Toloncarium*, the peculiar duty of which was to preside over the *Pilots*,* and to decide all causes which arose concerning certain maritime affairs.

10. For these reasons, the jurisdiction, belonging to these maritime magistrates, was called the *consulate*, a name which it still bears in many maritime towns of Spain and Italy. The name of *consulate* is also given to the laws, which served as rules of decision for those who resorted to this jurisdiction; and it is extended, also, to the book containing those laws.

11. Learned men are much surprised that we should remain to this day, ignorant of the time when this precious compilation was formed, by whom it was made, and, in short, what nation first publish-

(301) Marquard, loc. cit. n. 33.

(302) Dufresne, *Glos. Med. et Inf. Latin*, tom. 3, p. 1081.

* Pilots, or steersmen, were particular officers employed to manage the helm and direct the ship's course *during the voyage*. Every ship had one of these necessary officers on board; but since the great experience, and knowledge of navigation, in modern times, the master, or some of his crew, usually manage the helm, and the name Pilot is now applied to those persons along the coast, who are taken on board of vessels, to conduct them into port, or through channels, straits, or dangerous passages....T.

ed the *Consolato del Mare*, under which title, it afterwards acquired such high authority, as to become respected by all the world, not by the force of any ordinance imposing a sanction for its observance, but solely on account of the intrinsic excellence of the laws it contained.

12. Arnold Vinnius, in his *commentary on Peckius*, on the title of the Rhodian law *de jactu*, and in his *dedication*, remarks, "that the greater part of the laws in use relative to maritime disputes, among the Italians, Spanish, French, and English, have been according to their respective writers, extracted from the *consolato*, said to have been composed in the time of Saint Lewis, king of France."

13. Andre Crusius, in the 13th chapter of his book, entitled, *Commentaire, Historique, Philosophique, Juridique*, on the law 9, *Dig. ad legem Rhodiam de jactu*, in discussing the laws relative to maritime affairs, makes the same remark concerning the *Consolato del Mare*, and cites Vinnius and Arthur Duck.* This Englishman observes, on this subject, that, in England, the *Consolato del Mare*,

* *Arthur Duck*, a learned civilian, was born in 1580, and died in 1649. He was master of the Court of Requests in London. He wrote a work entitled, *De Usu et Authoritate Juris Civilis Romanorum in Dominiis Principum Christianorum*, and is probably the same which contains the opinion referred to by Crusius....T.

has as much authority as the Roman law, or any of the particular laws of his nation.*

14. Grotius(303) and Marquardus,(304) believe this collection to have been made in the time of the Crusades, by order of the ancient kings of Arragon, and that it was taken from the naval ordinances published by the Greek emperors, the emperors of Germany, the kings of France, Syria, Cyprus, Majorca, Minorca, and the republics of Venice and Genoa.

15. Targa, in his *Ponderazioni Marittime*, chap. 92, and Casaregis, in his *Nuova Spiegazione del Consolato del Mare*, published at Venice, in 1737, asserts, in the *advertisement*, that this compilation was the work of the ancient kings of Arragon; that it was written in their language; that, having been afterwards adopted by the most commercial nations of Europe, each translated it into its own

* This is true only in respect to the English court of admiralty, which, proceeding according to the laws of nations, regards the Roman law, and those Codes of maritime law which have been adopted by the commercial nations of Europe, as forming a part of the law of nations. See Blackstone's Commentaries, Vol. I. p. 79, 80, Vol. III. p. 69, and Vol. IV. p. 67.....T.

(303) Grotius *De Jure Belli ac Pacis*, lib. 3, cap. 1, § 5, in alligat. n. 6.

(304) Marquardus, *De Jure Mercatorum*, cap. 5, n. 59.

language.* He supports this opinion by the authority of no writer, nor by any historical fact, though he wrote eight centuries after the publication of the *Consolato*, according to his own assertion. He has not even examined, whether what he has advanced agrees with what is contained in the *preface* placed at the head of the book.

16. The *preface*, containing the names of so many sovereigns who recognised the *Consolato*, at the period of its reception, will serve as a guide in our researches, to discover the time when, and by whom, this compilation was probably made; for no person has yet arrived at certainty on this subject. It will be easily seen, that this very preface is entirely spurious, and apocryphal, when, with the aid of history, we examine it with critical attention, as I shall proceed to do in the following pages.

* " Basti il dire, che appena fu egli in quella lor lingua per ordine degli ântichi Re d'Arragona, compilato la prima volta, che, come fondamento, e norma della contrattazione marittima, abbracciato venne tra pochi anni da tutte le nazioni d'Europa più esercitate nel traffico, nel suo proprio idioma ciascheduno trasportandolo, e di mano in mano poi per più d'otto secoli seguitato fino a' di nostri, ne' quali in vigore eziando si mantiene generalmente."— This opinion of Casaregis, if not correct as to the original language in which the *Consolato* first appeared, is well founded as it respects its universal reception among all the commercial people of Europe, among whom it constituted a part of the maritime law of nations....T.

Preface to the Consolato examined.

17. The author of the preface,* just mentioned, begins, with saying, that the *Consolato* was first acknowledged at Rome, in March, 1075, at Saint John de Lateran, where the Romans swore to its perpetual observance.† He does not, however, as he has done in speaking of other countries, mention the name of the person who sanctioned this public act of acceptance. It is known, besides, that the chair of St. Peter, was at that time, filled by that resolute prelate, St. Gregory VII, jealous to excess of his sovereign authority, and who certainly would not have permitted the Romans to sanction a new law, without his intervention and authority.

18. He, next, declares the *Consolato* to have been received at Acre in the year 1111, by king Louis, and the Count of Thoulouse, on their way to Jerusalem;‡ and if the preface to these laws is to be credited, the history of the time is entirely overthrown. In that year Louis VI reigned in France, who never dreamed of making a voyage to the

* This Preface is entitled, *Ove, e quando furono concessi li presenti Capitoli e Ordinazioni*.....T.

† "*Roma.* L'anno, d'Incarnation di Cristo, 1075, a Cal. di Marzo fur concessi in Roma in S. Gio. Laterano, et giurati da Romani d'ossevargli sempre."—Preface to the *Consolato*.....T.

‡ "*Acri.* L'anno 1111, a Cal. di Septembre fur concessi in Acri nel passagio di Gierusalem per il Re Lodovico, et per il Conte di Tolosa, et giurorno osserrali sempre."—Ib....T.

Consolato not adopted by Louis VI. or VII. of France.

holy land. The second crusade was in the time of his son Louis VII, who embarked in the year 1147, to proceed to the Levant. If this be the Louis, who approved of the *Consolato del Mare*, at Acre, as mentioned in the preface, he could not have done it in 1111; for he was not then in existence, since he was born 1118. It is evident, therefore, that the author is mistaken, in this date, as well as in the chronology he has used in regard to the other nations, who subsequently adopted these laws.

19. But supposing Louis VII to be the person here intended, it is not easy to discover any reason he could have for approving of the *Consolato*, at Acre, either for the use of France, or of the people of the East. It could not concern France, since the author himself says, it was adopted at Paris, in 1250; nor could it be intended for the Levant, for Louis had no right to execute there, so important an act of jurisdiction. Baldwin III, was, at that time, king of Jerusalem. It is known, that Louis made the crusade with Conrad, emperor of Germany, and, that, in 1148, he held, at Acre, a general diet, to deliberate on the enterprise they were about to undertake against the infidels. William de Tours, who relates these facts, says, that Conrad, Louis, and Baldwin, met there with their respective followers; and he is not only silent as to the supposed adoption of these laws by Louis, but he gives it to be understood, that these naval laws for the Levant could not have been sanctioned by the approbation of Louis alone.

Consolato not adopted by the Pisans at Majorca.

20. In the assembly of Acre, were different princes, and lords, who accompanied the three sovereigns.—William of Tours, who gives us their names, makes no mention of the count of Thoulouse. This prince, who was probably count Alphonso, could not have been there, nor have taken any part in the expedition, since he died at Cæsarea, in 1147, and, consequently, before the general assembly was held at Acre, so that he could not have met Louis, in that city; facts which entirely destroy what this author advances in his preface.

21. From Acre he proceeds to Majorca.* He states, that in the year 1112, the Pisans had accepted the *Consolato* at that place; and that they took an oath for its perpetual observance; but history contradicts the date here given. It is a fact, that at that time the Moors were in possession of the Balearean Islands of Minorca, Majorca, and Yvica, or Eviza, and had it in their power to disturb all the coasts of Italy by their piracies. The Pisans, at that time, celebrated for their skill in navigation, and powerful at sea, excited by Pope Pascal II, endeavoured to expel the pirates from those islands. Having, in the year 1114, made themselves masters of Yvica, they undertook the siege of Majorca, which they took in the following year, 1115. They destroyed all the habitations, in order to deprive the

* "*Majorca.* L'anno 1112, fur concessi in Majorca per i Pisani, et giurorono d'osserrali sempre."—Ib....T.

Time of the Pisan conquest of Majorca.

African pirates of this place of resort, as appears from the chronicles of Pisa, mentioned in Muratori, vol. 6. Though *Ughelli*,* in the title of a poem on this war, composed by Laurentuis Vernense, or d'Verna, deacon to Peter, archbishop of Pisa, and a contemporary author, says, that this happened in 1114; yet Muratori proves, by the most authentic evidence, that this event took place in the year 1115, as above mentioned; and he adds, that according to Ughelli himself, this expedition was undertaken and terminated in the years 1113 and 1114, of the christian æra.(305) Moreover, the learned Fabroni(306) places this expedition in 1113 and 1114.

* Ughelli, a native of Florence, was born in 1595....T.

(305) The chronicle taken from a manuscript of de Lucca, (*Murat, Rer. Ital.* tom. 6.) speaking of the losses suffered by the Saracens, in this expedition of the Pisans in 1114 and 1115, says, *Pisani ultra quinquaginta Saracenorum millia occiderunt.* Volterranus, afterwards, adds, *(Geog. lib. 5, de rebus Pisan,) Sed et Rege Saraceno Majoricæ interfecto Reginam captam cum parvo filio Pisas, in triumphum duxere, ubi ab urbis Præsule christianus, simul et Canonicus S. Mariæ, factus in paternum regnum dimittitur.* Ughelli, in his *Italia Sacra*, lib. 3, says, that the mother of the young captive prince, called Lambert, became a Christian. *Christiana devota Sanctæ Mariæ permansit.* She died at Pisa. On her tomb is the following epitaph:

Regia me proles genuit, Pisæ rapuerunt,
His ego cum nato bellica præda fuit,
Majoricæ regnum tenui, nunc condita saxo,
Quod cernis, jaceo fine potita meo.

(306) Eloge de Pierre Moriconi, par M. Ange Falroni, note 19.

The Pisan chronicles do not mention the Consolato in 1118.

From all which it clearly follows, that the Pisans did not adopt the *Consolato*, at Majorca, in the year 1112, since that island was then in the power of the Moors.

22. One of the Pisan chronicles mentions, that after driving out the Moors from that island, the Pisans destroyed every thing, and having divided the spoils, they returned to their own country, loaded with glory and riches. There could be no reason, then, for leaving maritime laws in a country laid waste, and where there were no inhabitants left to observe them. On the other hand, these laws had not yet been published at Pisa. If we follow the dates pointed out by the author of the preface, it would appear that the Pisans were desirous to establish a system of laws in another place, before they had been promulgated in their own country. This is the less credible, as Vernense, who describes all the minute circumstances of this war, although he has spoken of this period, mentions not a word of this fact, which certainly deserved to be noticed, as a proof of a sovereignty, acquired by force of arms. Other Pisan chronicles make no mention of these laws, while at the same time, they pass over in silence, the fact, that they had been received at Pisa in 1118, at the church of *St. Pietro del Mare*, during the magistracy of Ambrose Migliari, the person who administered the oath for their observance, as the author of this preface pretends.*

* "*Pisa.* L'anno 1118, fur concessi in Pisa in S. Petro del

Capture of Consantinople by the Latins, in 1204.

23. In regard to Constantinople,* it is pretended that the commune of Venice, and king John, immediately after expelling the Greeks from that city, took an oath, in the year 1215, in the church of St. Sophia, to observe these laws. Constantinople was twice taken by the Latins; the first time, in 1203, when the French and Venetian crusaders, having become masters of the city, deprived Alexis Angelas of his throne, which they seized, and restored Isaac Angelas, and his son Alexis. This prince, however, was regarded by the Greeks with a jealous eye, as he had arrived at the throne, by the aid of the Latins. The disputes which arose on this subject, between the Greek nobles and the people, were the reason why the former elected a person of the name of Constantine, and the latter another Alexis, surnamed Mourzoufle. In the midst of these agitations, the Latins came to a resolution to sieze on Constantinople, and to make it the seat of their power. They became masters of it in 1204, and they afterwards divided the Empire. The Venetians had several provinces, islands, and cities, enumerated in the memoirs, annexed to the chroni-

Mare in potesta d'Ambrosio Migliari, e giuro osservarli." Preface to the *Consolato*....T.

* "*Constàntinopoli.* L'anno 1215, fur concessi per il commun di Venetia in Constantinole, nella chiesa di S. Soffia, per il Re Giovanni incontinente che fur cacciati i Greci, giurò d'osservarli sempre."—Ib....T.

The Consolato was not adopted at Constantinople in 1215.

cle of Andreas Dandolo.* They elected a Latin emperor, Baldwin, count of Flanders, who, in 1206, was succeeded by his brother Henry, count of Flanders, who died in 1216.(307)†

24. On comparing these historical sketches with what is related by the author of the preface to the *Consolato*, concerning its reception at Constantinople, the gross error into which he has fallen will be manifest; since the taking of that city does not correspond with the date he has given. It happened, as appears, in the years 1203 and 1204, while the author places it in the year 1215. He says, that the republic of Venice accepted these laws at Constantinople; but why not at Venice? By whom were they presented to the Venetians in that capital of the empire? The most accurate historians make no mention of the fact. Sandi(308) declares, on the

* Andreas Dandolo, is the historian of Venice for this period. Henry Dandolo was then Doge of Venice, and one of the most illustrious characters of the age. He commanded the Venetian forces, during the united crusade of the French and Venetians. He was aged eighty-four, when he was elected Doge, and died at the advanced age of ninety-seven. Gibbon throws some doubt on this remarkable longevity. *Decline and Fall*, ch. 60, *note*....T.

(307) See *L'Art de verifier les dates*, art. Constantinople.

† The English reader is referred to the 60th and 61st chapter of *Gibbon's Decline and Fall*....T.

(308) Sandi, *Storia Civile di Venezia*, tom. 1, liv. 4, chap. 7, p. 868.

Other particulars to shew the falsity of the preface to the Consolato.

contrary, that the most ancient and authentic Code, printed at Venice, was unknown before the year 1252; and he adds, that the republic of Venice, to insure its observance, appointed some of its most zealous citizens to carry it into execution. It being then an undeniable fact, that Constantinople was taken in 1204, it is impossible to make that event agree with the date of the acceptance of the *Consolato*, in 1215; since the city was at that time under the government of Henry, and the Venetians reserved nothing more than the right of electing a Latin patriarch.

25. The king John, who, according to the author of the preface, took an oath, in the same place, and at the same time, to observe these laws, will serve still more to expose this imposture. There is no mention made of this prince in any history; but merely of Giovanniccio (or Carlo-John,) king of the Bulgarians, who, in 1205, with the assistance of the Greeks, who had every where revolted, made himself master of Constantinople, and took the emperor Baldwin prisoner. As this prince had no connexion with the fact stated in the preface, or with the period of time there mentioned, there is reason to believe, that this king John is a person of the author's own creation; a mere imaginary sovereign.

26. The falsity of the account of the author of this preface may be more clearly seen, from the supposed

Further evidence of the mistakes in the Preface to the Consolato.

acceptance of the *Consolato* by a count in *Alamania*.* Does the word *Alamania* signify all Germany? It was not, at that time, subject to a count, or single sovereign; and the acceptance of the *Consolato* by a count, could not be said to be by the whole of Germany. If a part only was intended, it would have been necessary to point out what part. Besides, he speaks of a count, without mentioning his name, or surname. Frederick II was, at that time, emperor of Germany; and as it was not him, it must have been some fabulous count, whom he supposes to have approved of these laws in Germany.

27. It is further pretended, that the *Consolato* was adopted by the emperor Frederick, at Messina,† in the year 1225, at the church of St. Maria Nuova, in presence of the bishop of Catalonia. It is true, that Frederick was, at that time, in Sicily; but history, and the Sicilian chronicles, are silent as to this very important fact. Richard de St. Germain, a contemporary writer, says not a word about it, while he relates the most minute circumstances that took place

* "*Almania.* L'anno 1224, fur concessi in Almania per il Conte, et giuoro osservali sempre."—Ibid....T.

† "*Messina.* L'anno 1225 fur concessi in Messina nella Chiesa di S. Maria Nuova in presentia del Vescovio di Catania per Frederico Imperator d'Almania, e giuro di osservali."—Ibid....T.

Error in the Preface to the Consolato as to its adoption at Paris.

at that period. In the same year, Frederick passed from Sicily to the kingdom of Naples, and, according to Richard de St. Germain, celebrated, at Brinde, his nuptials with Jolante, daughter of the king of Jerusalem; though Sigonius, and other historians assert, that they were celebrated at Rome. They do not mention whether Frederick, though in Sicily, (where he did not remain a year,) went from Rome to Messina. Contemporary authors having observed a profound silence as to a fact so important, reason, and sound criticism, enjoin us to give no credit to a writer who attests facts so remote from his own time.

28. The author, in his preface, says further, that these laws were received at Paris,* in the year 1250, by John de Belmont, and that he swore by the soul of the king of France, in the presence of the knights *de l'Ost*, *Templars*, and *Hospitaliers*, and the admiral of the *Levant*, that the same should be perpetually observed. It is impossible to make this account agree with history. Louis, king of France, was, during that year, in the Levant, where he was defeated. In a battle which he hazarded against the infidels, he and his army were made prisoners of

* "*Parisi.* L'anno 1250, fur concessi per Giovanni di Belmonte sopra l'anima del Re di Francia che in quel tempo non era ben sano in presentia de i Cavalieri dell' Ost, e di i Templieri, e de i Spedalcri, e dell' Armiraglio di Levante, per osservarli sempre."—Ibid....T.

Consolato not adopted in France in 1250.

war. If so great an act of jurisdiction was exercised in France by John de Belmont, with what authority was he clothed? No person knows; the author himself has not told us. Why was it not rather done by queen Blanche, whom the king left regent of his kingdom? Another reflection naturally occurs, as to the knights *de l'Ost*, in whose presence the author asserts these laws to have been accepted. *L'Ost* is an old French word, signifying *army*. But besides that, this denomination of the knights of *the army*, is not used by any French author, ecclesiastical or secular, to distinguish any of those nobles or ecclesiastics to whom the title of *chevalier* is given, we are at a loss to imagine, why these military characters who, in general, were perfectly ignorant of all matters of law, which they abandoned to *clerks*, should have been introduced, to assist in the promulgation of a Code of maritime laws. On the same ground stands the supposed presence of an admiral of the Levant; since, according to the observations of Fournier and Valin, no such character as admiral was known in France, before the year 1327, under the reign of Charles IV, surnamed *le beau*, who, for the first time, conferred this office on Peter Megue, or Miege.(309)

(309) P. Fournier, *Hydrographie*, liv. 7, ch. 1.—Valin, *Comment. à l'Ordin. de France*, tom. 1, p. 82, "Mais que ce Pierre le Megue, ou Miege, ait été effectivement amiral de France en titre, c'est ce que prouvent non seulement les listes des amiraux données par Ducange, P. Daniel, Le Ferron, P. Fournier, et le P. Anselme, mais encore celle que l'on trouve dans un ancien manuscript de M. Dupuy, qui étoit à la bibliotheque de S. A. S.M. le duc de Penthievre, n. 848."

Further proofs of the falsity of the Preface to the Consolato.

29. The *Consolato,* appears to have been again accepted, in the year 1262, at Constantinople, in presence of the emperor Paleologus.* It was approved, for the first time, by the Latins, if we may credit the author of the preface, after they had expelled the Greeks from that city. The latter, after their restoration, accepted it anew. There is no doubt that Michael Paleologus, reigned that year in Constantinople, which he re-took in 1260; but no author, in relating the events of the times, has made any mention of the facts attested in this preface.

30. The imposture of this piece will further appear from the assertion that the *Consolato* was accepted in Syria, in 1270,† by Frederick, king of Cyprus, since history informs us, that Hugo III was at that time king of that island; that, in 1269, he was crowned king of Jerusalem; and that, during that period, there was no king of Cyprus, named Frederick.

31. The *Consolato* is a third time presented for acceptance at Constantinople, in 1270. The author

* "*Constantinopoli.* L'anno 1262, fur concessi in Constantinopoli in S. Angelo per Paleologo Imperatore, e giuro osservali sempre."—Preface to the *Consolato*....T.

† "*Soria, e Constantinopoli.* L'anno 1270, fur concessi in Soria per Frederico Re di Cipro, e in Constantinopoli, per l'imperatore Constantino, e giurorno osserrali sempre."—Ibid....T.

The dates given in this Preface erroneous.

pretends, that it was made by the emperor Constantine, though it had been already accepted by Paleologus in 1262. This would not, in fact, be surprising, if Constantine had been emperor at that time; but it is undoubtedly true, that Michael Paleologus reigned there until 1283, when he was succeeded by his son Andronicus II. Though Andronicus was crowned with his two brothers, Michael and Constantine, and it may thence be inferred, that this is the Constantine mentioned in the preface; yet the fact is opposed to history, for it is utterly improbable that he could have given a sanction to the *Consolato* without the intervention of his two brothers.

32. It is useless to carry any further, the refutation of the dates, at which the author of the preface declares the *Consolato* to have been received at Genoa, Marseilles, Brondi, Rhodes, and Majorca. From all that has been observed on the great want of chronological accuracy in this author, and for the strong reasons urged for doubting his assertions, there is ground to believe, that all the dates in this preface are the work of the writer's imagination, and that the compiler or editor of these laws supposed that their value might be enhanced, by being decorated with these illustrious testimonies in their favour. The true origin of the *Consolato del Mare* remains, then, enveloped in perfect obscurity, and the nation who first published it is yet unknown.

First editions of the Consolato—It was the work of the Pisans.

33. The first Italian editions declare it to be a translation from the Spanish.* Stephen Cleirac, in in his book, entitled, *Guidon de la mer*, supposes it to have been composed in the Catalonian language. Yet Vinnius, in his notes on *Peckius*, Ducange in his *glossary*, under the word *consules*, and Heineccius, always quote it in the Italian language.

34. Amidst so much uncertainty, and diversity of opinion, on a point so very interesting to the history of naval jurisprudence, and the origin of modern maritime law, I am obliged to have recourse to the chronicles and annals of the middle ages, to ascertain the truth, and to fix my own opinion. After the maturest reflection, and the most accurate researches, it appears to me, that the *Consolato del Mare*, can be the production of no other than the Pisans.

35. The frequent voyages of the Pisans, and the victories they gained, on various occasions, which

*, Hubner says a translation was made of the *Consolato* from the Catalonian language into the Castilian, by Francisco Biaz Romano, in 1539, in 4to, and he gives the title at full length. He does not say, however, that he had seen this Spanish edition; and Azuni makes no mention of it. Hubner also mentions an Italian translation, made by John Baptist Pedrezzano, and printed at Venice, in 1576, in 230 quarto pages. This same translation, he says, was reprinted at Venice, in 1584, with the same number of pages, to which a supplement was subjoined of a maritime itinerary, *Portolano del Mare*, by one Paul Gerardo, which fills thirty-eight pages more....T.

Authority of Gaetan shews the Consolato to be a Pisan work.

rendered them masters of the sea,(310) necessarily placed them in circumstances, that give rise to the frequent discussion of questions of maritime jurisprudence, and led them to form a body of laws, comprising all the decisions which might be useful, as had been formerly done by the Rhodians.—How can we refuse to a people, who owed all their grandeur and wealth to commerce and navigation, those laws and regulations, which are the only means of encouraging the one, and increasing the other ?

36. It is admitted, that this induction is too general, and that the same reasoning might be equally applied to every other maritime state, contemporary with Pisa. It becomes necessary, therefore, to support my opinion, by such authentic proofs, as will shew it be well founded. I shall begin with the testimony and authority of Constantine Gaetan, a Benedictine Abbe, in his *notes on the life of Gelasius II, page* 402, *of the second part of the* 3*d volume* of Muratori's *Rer. Italic.* in which he points out the exact date of the origin of the *Consolato del Mare.*

37. This author, after having lavished his praises on the republic of Pisa, endeavours to support his opinion by the testimony of John Charles Florentin, and cites the very words of that author, who speaks in high terms of the wisdom of the Pisans, and boasts of their maritime wars, and victories, by which they

(310) See Chapter II, section, *Pisa.*

The Pisans obtain the sanction of the pope to the Consolato.

gained the name of masters of the sea, as well as the applause of all nations. These praises were bestowed, he observes, among other reasons, because the Pisans were the first to engage in devising regulations for navigation, and maritime commerce, and in framing such laws, as were requisite to maintain good faith, and to serve as rules in all maritime contracts.(311) He affirms, that he is supported in his opinion, by that of Claude-Nicolas Frabricius Peyrescius, a Frenchman, and a man of letters, who lived in his time ; and he relates it as an incontestible fact, that the Pisans compiled the body of maritime laws, called the *Consolato ;* that though it had been already recognised by the republic, yet the Pisans, much attached to religion and to justice, believed it their duty, on a subject of so great importance, to have the approbation of the Holy See.(312) They proceeded to Rome for that purpose, and intreated, with great humility, Gregory VII, to give, by his sanction, the force of law to those statutes. The holy father, condescending to comply with their wishes, confirm-

(311) *Soli Pisani,* says Gaetan in his notes on Muratori, *promotores extiterunt, ut mare quod antea nullis legibus navigabatur, certis in posterum ejus navigatio coërceretur.*

(312) *Id quod etiam optime animadvertit suis ad me datis literis, vir sane eruditissimus, clarissimusque, Claudius Nicolaus Fabricius Peyrescius Gallus, de literis, deque literatis bene meritissimus. Et quando sine apostolica Petri facultate nihil unquam boni fieri potest, Pisani (potentissimæ etiamsi eorum Republicæ, voluntas adesset) nihilo minus ut religiosi, summum Reipublicæ Christianæ Antistitem ea de re in primis consulendum decrevere.* Muratori, *in loc. cit.*

Bettinelli and Fanucci speak of the Consolato, as a Pisan work.

ed these statutes, in the church of St. John de Lateran, on the 1st of March, 1075, and the Romans, at the same time, took an oath for their perpetual observance.(313)

38. The abbe Bettinelli, in quoting the authority of Gaetan, in his work, entitled, *Il Risorgimento d'Italia*, asserts the same thing. " She (Pisa) transmitted to Pope Gregory VII, in 1075, for his sanction, the naval laws she had collected, that they might become, by such approbation, a maritime Code for all Italy."(314)

39. The learned M. Fanucci, in *an academical discourse on the history of Pisa*, printed in 1788, confirms my opinion. He says, in one of his notes, page 70, that it is beyond all doubt, that this work *(Il Consolato)* contains many of the naval laws of the re-

(313) *Adeunt itaque Romam, Gregorium VII. papam conveniunt, aguntque cum illo, ut a sanctitate sua vim reciperent eæ maris leges, ordinationesque. Annuit sanctissimus pontifex, easdemque confirmavit in Basilica Sancti Joannis Lateranensis, Kal. Mart. anno Christo* 1075, *confirmatasque mox Romani juramento observare perpetuo se obstrinxerunt.* Vita Gelasii II. ex MS. biblioth. Ambrosianæ Pandulphi Pisani cum Comment. Constant. Cajet. apud Muratori, tom. 3, *Rerum Italic.* pag. 367.

(314) Diede ella, Pisa, in mano a Gregorio VII. nel 1075, perchè le approvasse, le leggi nautiche da lei compilate, che per tale approvazione divennero un Codice marittimo per gli Italiani. Bettinelli, *Il Risorg. d'Ital.* tom. 3, p. 84.

public of Pisa. In fact, continues this author, Valsechi, in his epistles, *de veteribus Pis. civit. const.* observes, that in the *Consolato del Mare*, are found exactly the same regulations relative to the principal and most important points of maritime law, as are contained in the *Breve maris*, or *Breve consulum maris Pisæ.* It is certain, that the statutes of Pisa, compiled in the 11th century, contain many laws similar to those of the *Consolato*, on various maritime subjects, and some, of periods still more remote. In the public records of Pisa, (which, by the indulgence of the civil magistrate, who gave me the permission with that frank liberality which marks his conduct, (315) I have myself verified) may be found at this day

(315) I ought, in this place, to express my gratitude to the civil magistrate of Pisa, for the honour he has done me, by causing my name to be inscribed among the nobles of that city, in consequence of the publication of the former edition of this work, in which this article appeared.

This honourable mark of their favour was announced to me, in the following letter:

"Ill^mo. e Claris^mo. Sig^e. Sig^e. Pad^e. Col^mo.

"L'Opera di V. S. Illustrissima e Clarissima, che ha per titolo, *Systema Universale dei Principi del Diritto Marittimo dell' Europa*, è stata accettata, e sommamente gradita dal magistrato civico di questa citta a cui si è degnata di rimetterne diversi esemplari.

"La profondità della giurisprudenza, e la sublimità dello stile e della erudizione, che compariscono nella suddetta opera fanno abbastanza connoscere la grandezza de' suoi talenti, e rendono sempre più celebre nel mondo letterario, il di lei nome; e percio

three collections ; the first, entitled, *Breve Curiæ ordinis maris ;* the second, *Reformatio ejusdem Curiæ*, and the third, *Brevia Curiæ ordinis maris, Curiæ mercatorum, et artium civitatis Pisarum.* These collections, though posterior to the municipal statutes above mentioned, since the first bears date in 1337, are evidently an abridgment, or a reformed copy, of a much

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qualunque elogio farsene potesse, non sareble mai correspondente al dei gran merito.

" Tralasciato pertanto tutto ció chia riguarda un tale encomio, mi farò solo un dovere di manifestarle, oltre i più distinti ringraziamenti anche i sentimenti più sinceri di stima, rispetto e gratitudine del Magistrato predetto verso rigguardevole persona di V. S. Illustrissima et Clarissima, per avere con tanta precisione di fortissime prove dismostrato, che l'istituzione del Consolato del Mare ricevuto dalle nazioni tutte, come firmissima base per il commercio e navigazione marittima, appartiene all' antica Pisana republica, e che a questa sola devesi la tanto sublime prerogativa di essere stata la prima a stabilire quel numero di leggi, che fossero bastevoli, ed efficaci a mantenere la buona fede, ed a regolare le contrattazioni della suddetta specie. Ella ne ha ripportata una lodevole vittoria contro gli avversari, ed ha restituto alla citta di Pisa quella gloria, che finora era rimasta sepolta nell' oscurità delle tenebre.

" Con quanta ragione adunque le deve esserè grato il popolo Pisano rappresentato dal Magistrato suddeto, ne resta abbastànza convinto chiunque legge l'allegata eruditissima sua opera sopra le sanzioni del mare ; e commechè egli niente più desidera, che dimostrarle col fatto la di lui riconocenza, cosa ha già date le convenienti disposizioni, con avere deputatato due nobili cavalieri ad umiliar supplica à S. A. R. per ottenere la grazia, che V. S. illustrissima e clarissima venga ammesso al godimento dei frimaro onori e gradi della città suddetta, la quale, semprechè ne consequisca l'intento, anderà superba di avere in lui acquistato un concitadino per tanti meriti illustre e celeberrimo.

more ancient Code of sea laws. It does not, therefore, contradict, in any degree, the fact before advanced, that, anterior to the compilation of maritime usages, under the name of the *Consolato del Mare*, the Pisans possessed a Code of maritime laws, on the same subject, formed at a period, when they were the first maritime power in the Mediterranean; and that this establishment of a tribunal for the decision of maritime causes, among the Pisans, was long anterior to that of any institution of the kind among any other commercial people.

40. M. Campmany, a Spanish author, in his excellent work, entitled, *Memorias historicas sobre la marina commerico y artes de la antigua Ciudad de Barcelona*, lib. 2, cap. 1, page 153, asserts the claim of the Barcelonians to the *Consolato del Mare*, against the Valencians, who arrogated it to themselves, in exclusion of all other nations, and adduces, with success, various proofs and documents in favour of this part of

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"Tanto debbo farle presente in ordine alla commissione ingiuntami con deliberazioné della prelodata Magistratura del giorno infrascritto, e con profondo assequio e rispetto ho l'onore di protestarmi.

"Di V. S. Illustrissima e Clarissima

"Umilis^mo. ed Obbl^mo. Servitore,

"Pisa, 22 Febbrajo, 1796. "Leopoldo Palloni, Caneell^e.

"Al Signor Senatore Domenico Alberto Azuni, Patrizio Sassarese à Firenze."

his cause; but he has not succeeded in depriving the Pisans of the glory of being the original compilers, to whom he does not hesitate to ascribe the merit of being the first authors of *maritime law*.(316) He,

(316) Campmany, page 179. "*En obsequio de la verdad debemos accomodar en parte nuestro dictamen al pensamiento de Constantino Cayetano en suo comentario a la vida de Gelasio II. natural de Pisa.*" Translation:—"A regard to truth on our part compels us to agree in opinion with Constantine Gayetan, in his commentaries on the life of Gelasus II. a native of Pisa."

Again, page 180, 181, "*Muy bien pudieron los Pisanos ser los primeros que instituyessen algunas ordinaciones relativas a su pays, y tal vez las primeras escritas de a quella epoca (seculo XI.) ma no nos consta si non las mismas, que hoy componen el cuerpo legal del* Consulado, *o si son parte de ellas en la substancia, y expression. Los Pisanos pudieran ser los primeros que escribieron un codigo maritimo sin que este sea el mismo, que hoy se conoce con el titolo de* Consulado del Mar. *Lo cierto es, que quando se emprendiò le compilacion por los prohombres de Barcelona habrian mudado ya las cosas, atendidos los usos, y practicas que se habrian adoptado en las Ciudades del Mediterraneo, desdeque los Pisanos pusieron la primera piedra al edificio que los Barceloneses provistos de mas materiales supieron conducir.*" Translation:—"It is very possible that the Pisans were the first who instituted any marine ordinances for their country, and, perhaps, published the first books of that period, (the 11th century;) but it is not certain whether they are the same which are comprised in the Code of the *Consolato*, or only a part of them, agreeing in substance and mode of expression. The Pisans may have been the first who composed a maritime Code, without its being the same known at this day, under the title, *Il Consolato del Mare*. The truth is, that when the magistrates of Barcelona undertook the compilation, changes had already taken place in many things depending on the customs and usages which had been adopted in the cities of the Mediterranean, from the time

The present Consolato different from the ancient Code.

therefore, believes it possible, that the Pisans might have been the first who composed a Code of maritime laws, without its being the same as the *Consolato;* but that the Barcelonians must have put the last hand to the work, and finished it in the form in which it now appears. This is equivalent to saying, that the collection we have at the present day, is truly the work of the Barcelonians.

41. This Spanish author, in taking all the chapters that form the collection of the present *Consolato* for the same ancient Consolato, that was adopted in 1075, by the nations above mentioned, falls into a great error, from which it is necessary to extricate him. At that time, this collection, without doubt, contained only 294 chapters, which I have, with good reason, attributed to the Pisans. The four additions, afterwards made to them by *Francis Celelles,* who was the compiler, and put the whole work into the Catalonian language, and which were printed together with the former chapters, at Barcelona, in 1502, and afterwards in 1592, were not adopted by the same nations, nor were they ever in force among them, nor did they serve as a rule to any other than the

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the Pisans laid the first stone of that edifice, to the completion of which the Barcelonians are known to have contributed the principal materials." The course taken by Campmany in favour of the Barcelonians, is, in fact, the most skilful method to maintain his opinion; but the proofs which I shall adduce to the contrary in the following pages, will entirely destroy his pretensions.

The contents of the present Code, or Consolato del Mare.

judges of the Consulate or maritime court of Barcelona, for which they were framed. The first of these additions consists of certain privileges granted in 1340, by Don Peter III, of Arragon; the second, which is without date, contains the ordinances of the counsellors, or municipal magistrates of Barcelona, for the regulation of the Arragonese Consuls in Sicily; the third, in 1484, made by the same officers, relates to certain maritime cases, and to marine assurances; the fourth, consists of ordinances taken from a collection, entitled, *Recognoverunt proceres*, made by learned and experienced men, in 1271, 1432, and 1481. These chapters, added to the ancient collection, form, at the present day, what is comprised under the title of *Il Consolato del Mare*.*

42. Even the introduction to this book, placed at the beginning of the different editions, is directly opposed to the conjectures of Campmany, since it states

* The volume of Casaregis, before referred to, contains, first, the 294 chapters of the *Consolato*, next, certain ordinances relative to armed ships, and various naval and marine offices, comprised in 36 chapters, then follow the four additions above specified; besides which, there are ordinances relative to marine assurance, in 27 chapters; laws and regulations by the *Conservatori del Mare* of the republic of Genoa, with instructions and orders for the conduct of owners, masters, and the various officers and persons concerned in navigation; and an appendix, containing different laws extracted from the sixth book of the statutes of Venice, relative to ships and navigation, and the *Portolano del Mare*, for the Levant, and various other places in the Mediterranean.....T.

as a fact, that the *Consolato* is long anterior to the establishment of consular magistracy at Barcelona. *A questes son los bons establiments, at los bones costumes que son de fet de mar, que los sabis homes que van per lo mon ne comenzaren a donar a nostres antecessores, los quals feren pu los libres de la sabietat de tos bones costumes:* that is, " these good establishments and usages, relative to maritime affairs, were given by wise men, who had travelled over the world, to our ancestors, who composed from them these books of prudent conduct, and wise customs."

43. It cannot, therefore, be doubted, after the proofs that have been adduced, that the Barcelonians had not any consular magistrates for the decision of maritime affairs, before the fourteenth century; since it is certain, according to the Spanish diplomatic collection, No. 248, and 275, page 368, that this magistracy was not instituted, until the reign of Peter III, of Arragon, who gave to the body of merchants the right of choosing, by a plurality of votes, two of their number for procurators, or judges of maritime affairs, saving, always, the jurisdiction(317)

(317) The same Campmany, in the history above cited, tom. I, tit. 2, p. 153, asserts also the same fact. *" A estos dos monumentos de la primera institucion del juzgado mercantil siguen otros testimonios no menos autenticos que a demas de confirmar su existenzia y exercicio e principios del siglo XIV. nos anuncian a sus juezes con el titulo ya de consules dal mar en numero tambien de dos può a nominacion de los magistrados municipales en cuyas manos juraban los em-*

The situation of the Barcelonians in the 11th century.

of the ordinary magistrates. This could not have been otherwise, since the *Consolato del Mare*, was certainly compiled, and universally known, from the year 1075, as I have already shewn, and as appears from its title page. At this very period, the Barcelonians, assisted by the Pisans, had scarcely begun to shake off the yoke of the Saracens. They were shut out from the sea by the continual piracies, and incursions of the Saracens, who were masters of the Balearean islands. Who, then, can believe, that in such a situation, they were in possession of the science of maritime law, and naval jurisprudence, and at a time, when, beyond doubt, the Catalonians were nothing more than simple fishermen ?

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pleos que eran annuales." *Translation*:—"To these records of the first institution of a maritime tribunal, may be added other evidence not less authentic, which will further prove its existence, and the exercise of its jurisdiction in the beginning of the 14th century, mentioning these judges, two in number, under the title of *Consules dal Mar*, but annually appointed by the municipal magistrates, before whom they took their oaths of office."

See, also, the form of the oath administered to these consuls, in the municipal archives of Barcelona, in a book, entitled, *Bolsa del Concels, ordinacions y lettres*, for the year 1301, folio 12, 48 and 62, art. 1. *Die Veneris Nonas Januarii, an. Dom.* 1502, *Conciliarii, et probi homines Civitatis Barchinonæ, elegerunt in consules maris ejusdem civitatis, P. de Olivaria, et G. Deuslomde, cives Barchinonæ, qui juraverunt in præsentia conciliarorum per Deum, et ejus sancta quatuor evangelia manibus eorum corporatiter tacta, bene et legaliter se habere in ipso consulatu, non inspecto honore, amore, vel timore alicujus.*

The Pisans communicated the Consolato to the Barcelonians.

44. It is equally certain, that the Barcelonians, did not frequent the ports of the Levant, until the thirteenth century, when they applied to commerce, and began to acquire some knowledge of maritime affairs. In the 75th and 76th chapters of the *Consolato del Mare*, is a question of freight, whether a merchant who embarks on board of a ship, ought to pay for his bed, furniture, and servants, in voyages, to, and from Acre, Alexandria, Armenia, Barbary, and Spain.(318) The Pisans, in the 11th century, visited, and were received in preference to other nations, and with many privileges, in those counties, where the *Consolato del Mare* was already in use. It is probable, that from them proceeded the Code which they communicated to the Barcelonians, after the capture of Majorca, in 1115, when they left them the laws, already observed by commercial nations, for the regulation of their infant navigation.(319)

(318) *Consolato del Mare*, ch. 75.—Patron di nave è tenuto a mercante di portare la cassa, e letto, e suo servitore, et compagno sufficiente nel viaggio, dove andar debbe, e debbali dar loco dove dorma, e se gli mercanti duranno tanto poco nolo, cioè a sapere se andera in Acri, in Alessandria, in Armenia, in Barbaria, o in Spagna, o nelle bande di quelle parti, o ne verra, se darà li dieci ducati d'oro larghi in giu di nolo, non gli debba essere tenuto il patron di nave portare cassa, ne servitore, né compagni senza nolo, né debba havere loco di mercanti." Ib. ch. 76.—" Se nave, o altro legno va in Barbaria, o in Spagna, o che venghi, il mercante non dà venti pesanti di nolo per la medesima ragione di sopra."

(319) *Accesserunt Pisanæ Majoricæ primum anno* 1115, *deinde Pisis* 1118, *eas ipsas etiam maris leges juramento corroborantes, mox*

The Breve Maris of Pisa.

45. After having thus dismissed the claim of the Barcelonians to the original collection of the *Consolato del Mare*, attributed by Campmany to his countrymen, it becomes necessary to shew on what foundation, besides the arguments already adduced, I have pretended to ascribe this honour solely to the republic of Pisa, by representing them as the first nation who made this collection, and who, by their own observance of it, set an example for its adoption by other maritime states.

46. The *Breve maris*, published at Pisa, in 1323, in the Italian language of that age, now existing in the archives of the priors of Pisa, at present, the records of the corporation, which I have carefully inspected, has the following title: "*Questo è lo Breve dell' ordine del mare della citta di Pisa, et del suo contado, et della Corte del dicto ordine per li socto scripti homini savi, et discretti deldicto ordine, et in quello ordine jurati, cioè ser Matteo Gatto, etc. et tutto lo dicto breve approvato et rattificato fu per lo consiglio del popolo di Pisa percio facto in della ecclesia di Sancto Sixto in del mille trecento vinti tre, sextodecimo kalendas Maii indictione quinta, etc.*"(320) This

secuti reges, et principes alii, respublicæ insuper, et populi tum occidentales, id ipsum præstiterunt. Constan. Gayet. apud Muratori, Rer. Ital. tom. 3, p. 367.

(320) *Translation*:—"This book is the Brief of the maritime order of Pisa and its count, and of the court of the said order; and the learned and discreet persons sworn of this order, are Sr. Matteo

Brief contains 192 chapters, to which, in the progress of time, some others have been successively added, with the following title : " *Questi sono capitoli del constituto dell'uso della citta di Pisa, li quali partengone alla corte del mare.*"(321) These chapters are the same with those of the statutes and usages of Pisa, collected in 1161. They exist, at present, in the Latin language,(322) under the following titles : *De naulo navium, De jactu navium, De rebus quæ*

Gatto, &c ; and the whole of the said Brief has been approved and ratified by the council of the people of Pisa, in the church of St. Sixtus, in the year 1323, on the 16th May, in the 5th Indiction, &c."

(321) *Translation :*—" These chapters form a part of the statutes and usages of the city of Pisa, and relate to the maritime court."

(322) This proves the reverse of what has been advanced by Casaregis, Targa, the cardinal de Lucca, de Hevia, Raudensis, Mornac and Sandi, who, copying the one from the other, have asserted, that the *Consolato del Mare,* was the production of the Catalonians, because the printed copies they had seen were in that language. It is well known, that all the laws promulgated in those times were written in Latin, as may be seen in the laws of the Lombards, the municipal statutes, and the *Breve maris* of Pisa. It is on this ground that Gaetan, who lived at a period less remote from those times, cites, before all others, those written in Latin, afterwards the copies which they had occasion to make from them, vide supra, loc. cit. *Extant ipsæ maris ordinationes lingua Latina, Italica, Provenzali, sive Gallica, Narbonensi, et Catalana, tum manu exaratis, tum impressis codicibus evulgatæ. Quibus multo fusius ostenditur, quod nos brevius asseruimus.* Apud Muratori, *Rer. Ital.* tom. 3, p. 367.

inveniuntur in navi, De damno navi dato ab altera navi; and were ordered to be translated from the Latin, into the vulgar tongue, and to be inserted in the abovementioned Brief, as appears by the 84th chapter; "*Anco juro che infra due mesi dalla intrata del mio ufficio faro li capitoli del constituto tutti li quali parlano del facto del mare, riducere, et scrivere, et porre volgarmente in del presente Breve, sicche dubitazione per inanti non nasca.*"(323)

47. These chapters, as to the matters of which they treat, are, in all respects, conformable to those comprised in the *Consolato del Mare.* There are, at the present day, a large number of them; but many have certainly been added in the later editions. In the collection published by Casaregis, it may be seen from his declaration, that the first 44 chapters were taken from the Consolato of Valencia; and, according to his assertion,(324) are wanting in the collection printed at Venice, in 1539. In the second

(323) *Translation*:—"I further swear, that within two months after entering upon office, I will cause to be digested, transcribed, and put into the vulgar tongue, and inserted in this present Brief, all the chapters of the statutes which treat of maritime affairs, in order that, in future, no doubts may arise thereon."

(324) *Casaregi, Spiegazione,* al cap 44, di Consolat. del Mar. "*Sin qui li capitoli del Consolato appartengono, come si è veduto, per lo più al modo Giudiciaro praticato dalla Corte, e Consoli di Valenza, ma da questo capitolo in appresso, si cominceranno a vedere le buone leggi, che sono state stabilite da uomini pratici, e prudenti intorno, al buon regolamento della navigazione, &c.*"

Chapters added in the edition of the Consolato by Casaregis.

edition, which was afterwards published at the same place, twenty chapters have been added, with the title, *Ordinazioni sopra le sicurta maritime*, and are comprised in the edition, by Casaregis,* as he says, in his preface, "*gli altri che ai suddetti vanno congiunti, non sono che disposizioni particolari di Barcellona fatte nei tempi appresso, le quali sendo stampate tutte in un libro, han data occasione a molti di crederle per una continuazione del Consolato del Mare.*†"

48. The chapters of the *Consolato*, possessed at the present day, contain alterations from the former, which change of time, and the existing circumstances of

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Translation:—Exposition of Casaregis of the 44th chapter:— "Hitherto, as we have seen, the chapters of the Consolato, have, for the most part, treated of the forms of judicial proceedings practised in the Court, and Consulate of Valencia; but after this chapter, we begin to perceive those excellent laws which have been established by experienced and well-informed men, in all the useful ordinances of navigation." He speaks still more positively on this point in his 4th Discourse, no. 15, *de Commercio*, and in the following terms: *Quia dictus Consulatus, uti leges particulares civitatis Barcinonensis, non sunt attendendæ in aliis mundi emporiis, nisi eas de consuetudine receptas fuisse probatum fuerit, &c.*"

* In the edition of Casaregis, that I have examined, there are twenty-seven chapters comprised under this title....T.

† *Translation:*—"The other chapters which have been added to the former, are only particular ordinances of Barcelona, made from time to time, which being all printed in one book, many have been led to consider them as a continuation of the *Consolato del Mare*."....T.

maritime commerce rendered necessary. In the 64th chapter, we find the following observations: "*Et per le ragioni di sopra dette fecino, questa menda li nostri antecessori, acciochè contrasto non possa essere intra li mercanti e li buoni uomini;*"(325) and again in chapter 69, "*Li nostri antecessori, i quali in prima furono, et cominciorno andare per il mondo volsero chiarire questo modo,.....e per le ragioni sopra dette furono questa menda, et questo chiarimento, li nostri antecessori, perciocchè contrasto, nè fatica, nè male non posso esser infra li patroni delle navi o navili, e li mercanti, che vanno per il mondo.*" Again in the 129th chapter; "*E per la ragione di sopra detta, gli buoni uomini, quali prima andorno per il mondo volsero in questo modo chiarire;*" and again, in the 209th chapter; "*E per le ragioni di sopra dette gli nostri antecessori hanno fatta questa menda per gli contrasti che ci possono intervenire.*" If we reflect on the style and

(325) *Translation*, ch. 64:—"And for the reasons above stated, our predecessors have made this amendment, in order that there may be no more dispute between merchants and good men." Ch. 69—"Those of our predecessors, who had begun to travel in the world, wished to elucidate it in this manner,".....and for the reasons before mentioned, our predecessors made this amendment, and gave this explanation, in order that there might be no possible difficulty, or dispute between masters of ships, and merchants, who passed from one country to another." In chap. 129, it is also said, "And for the reasons above given, those worthy men who first travelled through the world, were desirous to explain it, in this manner." Again, in chap. 209,—"And, for the reasons above stated, our predecessors have made this alteration in order to prevent any disputes which might arise."

language of these alterations, and corrections, we shall find, that they resemble the protestations beforementioned, which the consuls of Pisa were accustomed to make, in taking the oath prescribed; and we shall be convinced, that the *Consolato del Mare*, could have been the work of no other than the Pisans, at the time, when that *Code* was promulgated, and became generally known.

49. In support of what has been advanced, I shall further remark the uniformity discernable between the regulations, and expressions of the law, already cited from the *Breve maris* of Pisa, and the third law of the title in the Pandects, *Ad legem Rhodiam de jactu*. In the chapter of the *Breve maris*, beginning with *Cum arbor*, we find the following decision: "*Cum arbor navis incisa fuerit pro mercibus et navi liberanda, vel aliud instrumentum navis, removendi communis periculi causa, dejectum est, per libram damnum adæquetur.*(326) The 3d law, cited from the title in the Digest, directs the same, in the following words: "*Cum arbor aut aliud navis instrumentum, removendi communis periculi causa, dejectum est, contributio debetur.* This remarkable similitude between the decisions of the two laws, being once ascertained, there cannot be the least doubt, that the Pisans have extracted from the Rhodian laws, con-

(326) The regulations in the 94th, 193th, and 194th chapters of the *Consolato del Mare*, are, in all respects, similar to those contained in this law.

Time when the Pandects, &c. were first found in Italy.

tained in the Pandects, in force throughout Italy, from the 6th century,(327)* a great part of those ma-

(327) Donat Ast, in a work entitled, *dell'uso e dell' autorita della ragione civile*, lib. 2, cap. 1, p. 8, points out the precise time of the publication of the body of civil laws in Italy: "*Portiamo opinione, che il Codice, l'Instituzione e le Pandetti si fossero mandate in Italia intorno all'anno* 537, *che fu la prima volta presa Roma de Bellisario, ed il libro delle novelle dopo l'uccisione di Totila ed intiero fugamento dei Goti dal' Italia, come il tutto si fa conoscere da una della Constituzione dell' istesso Giustiniano, pubblicata l'anno del Signore* 563, *et* 37 *del suo impero. Translation*:—"We are of opinion, that the Code, the Institutes, and Pandects of Justinian were sent into Italy about the year 537; that Rome was then taken by Belisarius for the first time, and that the book of *Novels* was known there after the death of Totila, and the entire expulsion of the Goths from Italy, as may be seen by a Constitution of Justinian published in the 563d year of the Christian æra, and in the 37th of his reign."

As to the celebrated literary disputes, which arose in the last century, about the time when the Pandects were discovered, the best opinion is that of the Abbe Borgo del Borgo, a nobleman of Pisa, who, in a very learned dissertation printed at Lucca, in 1764, entitled, *Dissertazione sopra l'Istoria de Codici Pisani delle Pandette, &c.* proves that the Pandects were known a long time before they were discovered at Amalphi in 1135. After stating the reasons adopted by his celebrated adversaries, Breneman, Grandi, Fanucci, and Valsechi, he expresses himself, (p. 19,) in the following manner: "*Onde colla predetta multiplicità degli esemplari, che ho l'ardimento di proporre alla considerazione del mio cortese lettore, se mal non m'oppongo, pare à me, che si potesse ancor conciliare la gran lite de, mentovati due celebratissimi professori Pisani, stabilendo per concordia, che la citta di Pisa n'avesse già il suo molto prima, e che poi nell' anno* 1135, *acquistasse ancor quello d'Amalfi. Nel qual supposto però converrà credere ancora, che dei due esemplari pervenuti in Pisa, sendosene uno solo salvato da questo, che vi restò, unicamente*

ritime laws which they, as has been shewn, adopted and swore to observe, in the 11th century.

avessero origine dipoi tutti quanti i libri dei Digesti, di cui presentemente abbiamo notizia; siccome, per secondo argomento della sua nobile fatica, con ottime ragione sostene il sig. avv. Guadagni, nell' accennato suo libro."

Translation:—"It appears then, from the multiplicity of copies I have mentioned, and which I dare offer to the examination of the courteous reader, that we may, if I am not deceived, further reconcile the important controversy of the celebrated professors of Pisa, by admitting, first, that the city of Pisa had its copy a long time before; and that, afterwards, in the year 1135, it obtained that found at Amalphi. This being established, it is easy to believe that of the two copies acquired by Pisa, only one has remained extant; and that it is from the only remaining copy, that all the books of the Digest we know, have been taken, as Sign. Avv. Guadagni has suggested, and maintains, with the best reasons, in the second argument of his excellent work."

The opinion of M. Del Borgo, appears the more conformable to the truth, from the expression in the preamble to the Pisan constitution of 1161. *Pisana, itaque civitas a multis retro temporibus vivendo lege Romana, retentis quibusdam de lege Longobarda sub judicio legis propter conversationem diversarum gentium per diversas mundi partes suas consuetudines nisi scriptas habere meruit; super quas annuatim judices possint, quos previsores appellavit, &c.* Cod. dell' Archi. Communit. di Pisa, n. 1.

* Belisarius took Rome in 537; it was retaken by Totila in 546, and the Goths were finally expelled in 553, when Italy was again overrun by a new deluge of barbarians. Gravina is of opinion, that the laws of Justinian, though preserved at Ravenna, were not publicly known throughout Italy, but were buried and lost under the barbarous jurisprudence of the successive conquerors of the country. *A regionibus vero cæteris, quas statim ab expulsis Gothis,*

Conjectures of Gravina as to the introduction of the Pandects into Italy.

50. After all that has been said, I may, with reason conclude, that Gaetan has spoken the truth, when he asserts, that the Pisans have been the earliest promoters of maritime laws, since they were the first who collected them into a Code, which they promulgated

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Longobardorum colluvies occupaverat, Romanum jus exulavit: tandemque ab ipsa Ravenna excessit ..... Itaque Italia majestate simul et legibus exuta suis, jugum imperii, legumque subiit barbarorum, dominaque rerum humanarum sensu pristinæ libertatis, veterisque magnitudinis per longum, ac vile servitium privata, pro Romano splendore, atque humanitate juris, belluinas, atque ferinas immanes que Longobardorum leges accipit ..... In Italia vero, (si Ravennam excipias) resistente ab initio barbarie Gothorum, nunquam floruerunt; vixque tandem emerserunt, anno 1530. He adds, that the copy of the Pandects found in the time of Lothario, 1135, were given by that prince to the Pisans, who asked it as a reward for the assistance given him by their fleet against Roger, duke of Apulia, and count of Sicily. The copy was transported, after the capture of Pisa, by the Florentines in 1406, to their capital. From this copy all the other Latin editions are supposed to be derived. Gravina imagines the *Novels* to have been spread over Italy before that time, and he mentions Ivo of Chartres, as speaking of the civil law of Justinian, and the Pandects, before which time, if they had been met with, they were soon forgotten, and suffered by sluggish indifference, to sink into oblivion. A copy of the Novels was found at Ravenna, and, some have supposed, another of the Pandects. It is probable, as Gravina conjectures, that many books of the civil law, dispersed over Italy, when the thirst for Roman jurisprudence revived, were rather recognised than discovered; *agniti potius fuere, quam reperti*. Gravina, *de ortu et progressu juris civilis*, § 139, 140, 141. Gibbon's History, chap. 44. See also Giannone, *Istoria di Napoli*, lib. xi. ch. 11, who mentions the date of the epistle of Ivo concerning the Pandects, to have been about the year 1099.....T.

The Pisans made the first Code of maritime laws.

in Italy, from whence it has been taken, and received by all maritime states, for the regulation of their nautical concerns, and has passed from hand to hand among all nations, as the interests of commerce made them feel the want of such laws. I shall, therefore, consider the Pisans at the period abovementioned, the first legislators of maritime commerce in the Mediterranean, since the proofs produced, place in the clearest light, the error into which those authors, cited in the 13th, 14th, 15th, and 40th paragraphs, have fallen, in regard to the supposed origin of the *Consolato del Mare*. I have further pointed out the mistakes of the author of the *preface*, found in the beginning of almost every edition of that Code, and have shewn, that it deserves no regard, and is wholely destitute of authority.

ARTICLE IX.

Of the Amalfitan Laws.

§ 1. THE city of Amalphi, situated on the confines of the ancient Lucania, in the very place formerly inhabited by the Picentines, now the province of Salerno, in the kingdom of Naples, was bathed by the ocean along its whole shore, and which was also called the coast of Amalphi. This city was originally built by some families who fled from Rome, to escape from the tyranny which reigned in that capital, towards the close of the ninth century. In sailing towards Constantinople, where these co-

The ancient wealth and splendor of Amalphi.

lonists wished to settle, they were shipwrecked on this coast. The lofty promontory, not far distant, which appeared an emblem of the liberty and security of commerce, offered an attractive, and commodious assylum.

2. Its great population, wealth, and flourishing commerce, celebrated by the poet, William Pugliese,(328) rendered it so powerful at sea, that its naval forces, as appears from the history of the middle ages, were more than once employed to assist the sovereign Pontiffs, against the Saracens.(329) They made frequent voyages to the Levant; and it was to favor the commerce of the Amalfitans with the Turks, to whom they carried new merchandise,(330) that

(328) *Urbs hæc dives opum, populoque referta videtur.*
Nulla magis locuples argento, vestibus, auro.
Portibus innumeris hac plurimus urbe moratur,
Nauta maris, cœlique vias aperire paratus.
Huc et Alexandri gens hæc freta plurima transit.
Hic Arabes, Indi, Siculi noscuntur, et Afri.
Hæc gens totum prope nobilitata per orbem,
Et mercanda ferens, et amans mercata referre.
Gul. Pugliese, lib. 3, *Poem. Histor.*

(329) Muratori, in his *Annals of Italy*, of the year 1077, speaking of the surrender of Amalphi to Robert de Guiscard, calls it the most commercial city of the age, abounding with inhabitants, ships, and gold. "*Citta allora mercantile ul sommo, piena d'oro, piena di popolo, et di navi.*"

(330) *Inter eos autem qui loca prædicta tentaverunt, fuerunt viri de Italia, qui ab urbe, quam incolunt, dicuntur Amalphi-*

The Amalfitans establish commercial houses in all the ports of the East.

they received great indulgence from the caliph of Egypt, who gave them a place at Jerusalem, where they were permitted to retire, and reside in their different voyages. This gave rise to the order of St. John of Jerusalem, so celebrated in the history of christianity.(331)

3. The constant navigation of the Mediterranean, by the Amalfitans, rendered it necessary to form establishments in every port, for the reception of their merchandise. They possessed many of these places of deposit in Sicily; they had one in the suburbs of Palermo; and at Messina, and other cities of the island, they had warehouses for their goods, which were called Amalfitan. At Constantinople, they were in possession of the church of St. Andrew, with a certain quarter of the city, in which they enjoyed many privileges, and immunities. They filled the Levant with their commerce, and none but the merchants of Amalphi, were to be seen at Antioch, Alexandria, in Syria, in Arabia, in India and Africa, where they were the first to carry their new products, and manufactures. At the end of the history of the Florentine Pandects, by Henry Brenkmann,* a Dutch

tani..... Hujus regionis habitatores, ut prædiximus, primi merces peregrinas, quas oriens non noverat, ad supradictas partes lucri faciendi gratia inferre tentaverunt. William, Archbishop of Tyre, Histoire de la Guerre la Terre Sainte, liv. 18.

(331) Sigonius, de Regno Ital. lib. 9, p. 387.

* This history was published at Utrecht, in 1722, in 4to. The

The court of admiralty at Amalphi was in high repute.

lawyer, are two learned dissertations, in which he describes the grandeur of this city, and its famous arsenal, for the security of its harbour, and coasts, vestiges of which were yet to be seen at the end of the 16th century.

4. From these facts, it is natural to conclude, that the Amalfitans, so celebrated for navigation, and maritime commerce, so rich and powerful, and so well received, and highly favored by all nations with whom they had any commercial relations, must have made laws adapted to the circumstances in which they were placed. Their long experience, the dangers they encountered, and the frequent controverted cases which arise in commerce, must have obliged them to publish some regulations on the subject. We know, from history, that a high court of admiralty was established in that city, to which all the nations in the Mediterranean resorted. Even Constantinople referred maritime disputes to that tribunal, to have the benefit of its equitable decisions. The inhabitants of Amalphi, in a short time, acquired immense riches, and obtained the highest respect at Constantinople, on account of their great attention to commercial affairs, and their profound knowledge of this branch of jurisprudence. If the mariner's compass, as some authors assert, was invented by the Amalfitans, who, in

author undertook a pilgrimage to Florence, where he spent several years in the study of a single manuscript. See Gibbon, chap. 44, *note*. See also Giannone, *Istoria di Napoli*, lib. xi. ch. 11....T.

my opinion, were only the improvers(332) of it, a nation so experienced in navigation, would undoubtedly be desirous of regulating commerce by a particular Code of laws.

5. Martin Freccia, who wrote in 1570, speaks of a work of naval jurisprudence, called the *Amalfitan Table*. He affirms, that it eclipsed the Rhodian law; that by this Code all maritime affairs were decided; and that in his time it possessed more authority than any other.(333) Henry Brenckmann confirms, and supports the opinion of Freccia: yet he leaves in obscurity, the period when this *Table* was formed. We are ignorant, also, of the laws which it contained, and at what time they were in force at Amalphi, since no other historian, after Martin Freccia, makes men-

(332) See my *Dissertazione sulla Bussola nautico*, read before the Royal Academy of Florence, 10th September, 1795, printed by Philippi Stecche, in which, I have incontestibly proved, that the French were the first inventors of the mariner's compass, and that the Amalfitans only made improvements in it; but the Portuguese first carried it to perfection, and successfully employed it in the discovery of the new world.

(333) *In regno non lege Rhodia maritima decernuntur, sed Tabula, quam Amalphitanam vocant, omnes controversiæ, omnes lites, et omnia maris discrimina ea lege, ac sanctione usque ad hæc tempora finiuntur.* Freccia, *de Subfeudis.* See Giannone, *Istoria Civile di Napoli*, tom. 1, liv. 7, ch. 3, p. 462, &c. and Nicolas Fortunato, *Reflessione intorno al commercio antico e moderno del regno di Napoli*, lib. 1, cap. 4, and D. Paul Jorio, in his celebrated work, entitled, *Storia del Commercio, e della Navigazione.*

Eleanor, dutchess of Guienne, compiled the Role d'Oleron.

tion of them, except M. Signorelli, who, in his excellent work, entitled, *Della Coltura dell due Sicilie*, § 7, drops but one unimportant word concerning them.

ARTICLE X.

Of the Laws of Oléron.

§ 1. THE people of every state, conforming to the primitive laws unfolded in the preceding pages, have formed for themselves a system of maritime legislation, adapted to their own constitution, and local usages; but the fundamental principles have been taken from the ancient sea-laws.

2. Queen Eleonora, dutchess of Guienne, on her return from the Holy land, observing the high reputation of the *Consolato del Mare*, which had acquired the authority of law throughout the Levant, immediately caused a compilation to be made of the maritime sentences and judgments of the West, under the title of *Role d'Oleron*, from the name of the island on the coast of Guienne, and which she intended(334) should serve as rules of decision in all questions relative to navigation and maritime commerce. Her son Ri-

(334) The island of Oleron, is situated at two leagues distance from the coast of France, near Rochelle; it is five leagues in length and two in breadth, and contains 12,000 inhabitants, most of whom are excellent seamen.

chard I. king of England, and duke of Guienne, afterwards adopted this collection, to which he added various decisions relative to maritime affairs, preserving, however, the title of *Róle*, or *Jugement d'Oleron.*

3. It is from these additions, that Selden(335) infers, that the *Role d'Oleron* is an English work, published by Richard, in his character of king of England ; and this has been repeated by Blackstone.* (336) But it is only necessary to glance at the work,

(335) *Ut quemadmodum Rhodiæ leges nauticæ, seculis in vetustioribus Rhodios fuisse Græci maris dominos (ut res ipsa se habet) probant, ita Oliarenscs leges hujusmodi vim in mari sortitæ, a primæ earum institutione, Augliæ regem utpote auctorem suum, maris circumvicini dominum nunquam non recognoscunt.* Selden, *Mare Clausum*, lib. 2, cap. 24, p. 462.

(336) Commentaries, Vol. I. page 417, and Vol. IV. page 423, 12th edition.

* Blackstone refers to the *Us et Coutumes* of Cleirac, and to the 4th Institute, p. 144. Coke's authority is a passage in the celebrated record in the Tower of London, before mentioned, which is, in fact, the authority for the assertion of Selden, Blackstone, and the other English lawyers. The words are, *Quæ quidem leges et statuta per dominum Richardum quondam regem Angliæ in reditu suo a Terra Sancta correcta fuerunt, interpretata, et in insula Oleron publicata, et nominata in Gallica Lingua, La Ley Olyronne.* The laws, and statutes here referred to, are those made under former kings of England, relative to the court of admiralty, for the preservation of peace, and the punishment of all offences committed on the British seas, and the concluding sentence above quoted, leaves the matter in so much obscurity that it can hardly be inferred from

The Role d'Oleron is not an English work.

to be convinced, that those two writers, from a desire to flatter their nation, have erroneously attributed to Richard, the glory of having composed this Code; not considering that queen Eleonora was at that time dutchess, and her sons, dukes of Guienne, for which reason it was written in their native tongue. The *Role d'Oleron*, was published about the year 1150, when Eleonora was wife of Lewis, the younger, by whom she was repudiated, and the marriage declared null, by the council of Beaugenci, the 18th March, 1152, on account of relationship, though they had cohabited, as married persons, for near fif-

it, that Richard I. was the *original* compiler of the laws of Oleron, though they might have been afterwards published in his name. The copy of the laws of Oleron, inserted in the *Collection of Sea Laws*, and referred to by Selden, bears date in 1266; though the English compiler, and Selden seem to conclude, that this date is either erroneous, or that the copy is not an original, but a subsequent one certified by some notary. Cleirac asserts, that these laws were originally compiled and published by Eleonora, as mentioned in the text; but that Richard II, on his return from the Holy land, made additions to them, and the whole were republished in Gascon French. Eleonora was the daughter and heir of William duke of Guienne, and earl of Poictou, and married to Lewis VII, of France, whom she attended in his crusade; but she was divorced in 1152, and, six weeks after, married Henry II, king of England, who thus acquired all her dominions, and was succeeded by his son Richard I. (Hume's History, Vol. II. p. 367.) Emerigon, in the preface to his work on assurances, after citing Cleirac, Selden, and Blackstone, concludes with saying, on looking over the Code, it will be seen, that it was made for the province of Guienne, and being the work of a vassal of France, it properly belongs to that country.....T.

teen years. She married, on the 18th May, in the same year, Henry, duke of Normandy, and count of Anjou, son of Godfrey the fair, or Plantagenet, afterwards, king of England. Richard the first, the third son of Henry and Eleonora, did not succeed his father as king of England, until the third of September, 1189, when he was crowned at London, continuing, however, duke of Acquitaine conjointly with Eleonora, who was still living. Besides, as the *Jugement d'Oleron*, related solely to the navigation of the sea of Gascogny, and from Bordeaux to Rouen, without any regard to the navigation of England, all that can be said in favor of the pretension of the English is, that Richard, who published it, must be considered as acting at the same time in his character of king of England.(337) But if the *Jugement d'Oleron*, had been an English work, would it have confined its regulations to this small portion of the sea ? Would it not have spoken of the channel, the Irish sea, and other parts of the ocean, which England at that time considered as her own dominion ?

4. If we reflect a moment on the contents of this Code, it will be readily seen, that it was compiled for

(337) Vinnius,* in his Preface, ad Peckium, and in his Commentary ad leg. 1. of the Digest, tit. ad legem Rhodiam. Cleirac, *Us et Coûtumes de la Mer. Introduction.*

* Vinnius merely refers to the laws of Oleron, as the maritime law of France.....T.

Cleirac's edition of the laws of Oleron.—Wisbuy.

Guienne only, and that it belongs to France, since it was the work of a vassal of the crown, and related to a province, at that time a fief of the French monarchy.*

5. The *Jugement d'Oleron* is contained in the first part of Cleirac, who has explained it by an excellent commentary ; but he makes no mention of *marine assurance*, nor does it contain any thing relative to marine interest, or the contract of bottomry. Perhaps this contract was not known at the time this compilation was made, or, at least, was not in use in France.†

ARTICLE XI.

Of the Laws of Wisbuy.

§ 1. AFTER the *Jugement d'Oleron*, there appeared a compilation of ordinances, by the merchants and burgesses of Wisbuy, a city in the island of Gothland, belonging to Sweden, situate in the Baltic sea, and in the diocese of Lincossen. This city was formerly the most flourishing mart, and fair in Europe ; at present, it is almost in a state of ruin.

* Emerigon, *Traité des Assurances*, Preface, page 11.....T.

† In the *Preface* to the laws of Oleron, inserted in the *Collection of Sea Laws*, p. 117, the author gives the introduction of Cleirac at length, and contents himself with saying, that " his arguments

Origin of the city of Wisbuy.—A mistake concerning it.

2. Wisbuy* is derived from Wineta, a city of the island of Usedom. This island having been swallowed up by the ocean, the Goths built Wisbuy, to which they transferred the inhabitants who had escaped from the destruction of Wineta,(338) which, on account of its advantageous position, at the mouth of the Oder, had become a place of considerable trade. The learned Philip Melancton, and Adam Bremens, who speak of Wineta, call it Veneta. This resemblance to Venetia, the name for *Venice*, has, perhaps, led some writers into an error. They pretend that, a short time before Charlemagne, the island of Rhodes having lost its former splendor, by the irruption of various tribes of barbarians, and especially by the Saracens, who seized on most of the islands of the Mediterranean, commerce, and nautical science passed from the island of Rhodes, and the Mediterranean, to the island of Gothland, and the Baltic sea. But the distance of these places from each other, renders this supposition inadmissible. We have, besides, monuments of the maritime power of the Northern nations, and of their skill in the art of navigation,

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are so poor that they hardly need an answer." The reader is further referred to the *Introduction* to the *System of the Law of Marine Insurance*, by I. A. Park, p. 30, 31; and to the *Treatise on the Law of Insurance*, by Samuel Marshall, p. 16, of the Introduction....T.

* See the Preface to the "Laws of Wisbuy," in the "Collection of Sea Laws."....T.

(338) Petrus Berth, *Comment. in Wysbia*, lib. 3.

The laws of Wisbuy were published in the 12th century.

that render it necessary to recur to a more remote æra. We read in Tacitus, that the *Sueones*, or the Swedes, surrounded by the seas, were powerful on the ocean ; and that their vessels, more commodious than those of the Romans, and on account of their having double prows, might touch the land without being turned round.(339.)

3. The laws of Wisbuy, so celebrated by the writers of the 12th century, at which time this maritime Code made its first appearance, as the preface preserved by Leibnitz,(340) in an ancient manuscript informs us, are a proof, that maritime commerce had long flourished in the Northern countries of Europe. These laws, at their first origin, were adopted by all the nations of the North ;(341) but the precise time is not known, and, if we may believe Selden, it was not prior to the year 1288.(342)

4. The Northern writers pretend, that the laws of Wisbuy are anterior to those of *Oleron*.(343) Clei-

(339) Tacitus, *de Moribus German.* cap. 44.

(340) *Script. Rerum Brunsick*, tom. 3, p. 750.

(341) Olaus Magnus, *Histor.* lib. 10, cap. 16. Herberstein, *Rerum Muscovit. Comment.* p. 118.

(342) Selden, *Mare clausum*, lib. 2, cap. 24.

(343) Kuricke, *Rubr. ad Jus Marit. Hanseat.* p. 587. Lubeck, *de Avariis*, p. 105.

The laws of Wisbuy were received among all the nations of the North.

rac, in the preface to his work, entitled, *Us et coutumes de la mer*, strongly asserts the contrary,* and his opinion is confirmed by Limier, in his history of Sweden. He pretends, that they were held in as high esteem in the Baltic sea, and among all the nations of the North,† as were the Rhodian laws, and the *Jugement d'Oleron*, in other parts of the world. This led Bouchard to consider them as a supplement to the *Role d'Oleron.*(344) However this may be, Grotius(345) pretends, that the authority of these laws extended to Denmark, and Sweden, and that they were adopted by the nations beyond the Rhine. *Lex Rhodia navalis pro jure gentium in illo mari Mediterraneo vigebat, sicut apud Galliam leges Oleronis et apud omnes Transrhenanos leges Wisbuenses.* Perhaps Grotius did not, at that time, know of the *Consolato del Mare.*(346)

5. The 45th article of this *Ordinance*, makes slight mention of the contract of Bottomry, and the 68th

* See Emerigon, *Traitè des Assurance*, Preface, page xi.....T.

† Loccenius, de Jure Maritimo et Navali in Præfat.—*Quæ leges (Wysbyenses) eandem fermè authoritatem hodie obtinent quam olim leges Rhodiæ. Certe apud Transhenanos populos, respub. Hanseaticas, et in Regnis Borealibus communi usu receptæ et quasi jure civitatis donatæ sunt*....T.

(344) Bouchard, Theoric des Traite de Commerce, chap. 4, sec. 3.

(345) Grotius, *Mare liberum.*

(346) Olaus Magnus, and Heberstein, *ibid.*

article speaks of sureties given for ships. It appears, from this, that the contract of assurance, had, at that time, begun to be introduced into commerce, under the name, and form of surety ; and that, consequently, there is no foundation for the opinion entertained by some writers,(347) that the origin of assurances cannot be traced further back than the 15th century.*

ARTICLE XII.

Of the Laws of Marseilles.

§ 1. THE city of Marseilles, founded by the Phoceans,(348) the most expert navigators of ancient times, was, at first, an aristocratic republic.(349) The example of its founders powerfully contributed to

(347) Stypmanus, *de Jure Marit.* part 4, cap. 11, art. 1, n. 3. Ansald, *de Commercio,* disc. 70, n. 6. Casaregis, *de Commercio,* disc. 2, n. 3. Gibbalinus, *de Usuriis,* lib. 4, cap. 11, art. 1.

* An English translation of the laws of Wisbuy, in 70 articles, is contained in the "Collection of Sea Laws." They were originally published in the Teutonick language, and, according to *Olaus Magnus,* lib. 10, cap. 16, were respected and received on all the coasts of Europe, from Muscovy to the Mediterranean....T.

(348) The ancient medals of Marseilles, on which is represented a head of Minerva, the divinity of the Phoceans, seem to confirm this idea of its origin.

(349) Aristotle, *Politics,* lib. 6, cap. 7.

Pliny and Cicero highly commend the laws, &c. of Marseilles.

strengthen the natural propensity of its inhabitants to maritime commerce, the great object of their policy. By its wise and prudent institutions, according to Cicero,(350) more easily admired than imitated, players, and all those who under the cloak of religion lived in voluptuousness, were banished from the city.(351) A celebrated academy, where the youth were instructed in every kind of learning, contributed to raise the sciences and fine arts, in Marseilles, to the highest degree of perfection. It deserved, therefore, the appellation given it by Cicero, of the Athens of Gaul, *Galliarum Athenæ ;* and the name bestowed by Pliny, the mistress of liberal studies, *Magistra Studiorum,* The Roman youth, according to Strabo, went to form their minds in its schools ; and many cities of Italy were eager to entrust the charge of public instruction to the learned citizens of Marseilles.(352) Cicero could not refrain from expressing an opinion, that the excellent discipline establish-

(350) Cicero, *pro Flacco,* ch. 26, *Ut omnes ejus institutæ laudari facilius possint quam æmulari.*

(351) *Inde Massilienses quoque ad hoc tempus.....Eadem civitas severitatis custos accerrima est; nullum aditum in scenam mimis dando. Omnibus autem, qui per aliam religionis simulationem alimenta inertiæ quærunt, clausas portas habent.* Valerius Maximus, *de Exter. Instit.* lib. 2, cap. 6, § 7.

(352) See my two *Essays on the maritime voyages of Pythias of Marseilles,* read at the public sittings of the academy of that city, the 10th July, 1803.

Excellent maritime regulations have long existed at Marseilles.

ed in that city, was superior, not only to that of Greece, but to that of every other nation.(353)

2. Mornac and Giballinus assert, that, after the example of the Rhodians, the Marseilloise published naval laws, which they caused to be engraved on stone, "*Eorum leges Ionico more erant publicè propositæ;*" but they have been destroyed by time.(354)

3. The republic of Marseilles, was wisely governed, and maintained its excellent principles, for a long period. The municipal ordinances, published in the 13th century, contain many chapters on navigation, and maritime contracts, which are worthy of the most enlightened ages of antiquity. The Marseilloise may be proud, that their ancient naval laws are not lost; engraven on their hearts, they have been transmitted from age to age, and are sufficient to preserve and cherish that love of equity, and that ardent commercial spirit, which render that city the richest port in the Mediterranean.(355)

(353) *Cujus ergo civitatis disciplinam atque gravitatem non solum Græciæ, sed haud sio an cunctis gentibus anteponendam dicam.* Cicero *pro Flacco*, ib.

(354) Mornac, on the 9th law of the tit. of the Digest, *ad legem Rhodiam de jactu. Quondam a Massiliensibus plurimæ leges nauticæ, instar Rhodiorum, conditæ fuerunt, quas hodie ignoramus, eo quod vel injuria temporum, vel hominum ignavia perierunt.* Giballinus, lib. 4, cap. 11, art. 2, n. 2.

(355) See the Introduction to the excellent work of M. Emerigon, entitled, *Traité des Assurances.*

ARTICLE XIII.

Of the Laws of the Hanse-Towns.

§ 1. THE confederation of the Hanseatic cities, called *Hanse-Teutonick*,(356) originated at Bremen, a city of lower Saxony, in Germany, in the year 1164, and became afterwards so considerable, that it reckoned, under its dependence, sixty-two cities, without comprehending those of many of the states of Europe, which afterwards joined the league, on account of the immense increase of commerce the confederate cities acquired by means of their union.(357)*

2. There was nothing military in the first institution of this confederacy: Its principal object was a

(356) This was an union of privileges and rights termed *Aenzee Steden;* that is, *steden*, city, and *aenzie*, on the sea. These words were afterwards abbreviated into *anserche* or *ansesche*. The French pronouncing this word after their manner, have made it *hanse*, taking this word to mean a company, or an alliance.—Raguenau, at the word *Hanse*.

(357) Ang. de Werdenhagen, *de rebus publicis hanseaticis*. Emman. de Meteren, in his *Chronicle*.

* See also Anderson's History of Commerce, Vol. I. p. 209, (Dublin edition.) Werdenhagen makes the word *hanse* to signify, *on the sea*. The Hanseatic league is called by the French, *Hanse Teutonique*, which is the title of this article. Werdenhagen gives a minute account of the origin and progress of all the towns admitted into this confederacy. See also Cleirac, page 160, *Collection of Sea Laws*, p. 191....T.

The Hanseatic union was originally commercial, and not military.

mutual participation of privileges among the contracting parties, in regard to commerce, not for any determinate time, as is usual in all warlike confederacies, but for an indefinite period. In the lapse of time, there were formed, among the Hanseatic towns, associations of the other kind, as in 1370, when the confederacy declared war against Waldemar III, king of Denmark, and on several other occasions. The latter associations were entered into by special conventions, and for limited periods. They were incidents of the Hanseatic league, but formed no part of the basis of the structure. It is evident, therefore, that the *Hanseatic confederacy*, was originally nothing more than articles of copartnership, by which the cities who were made parties to the contract, divided the profits of the trade carried on by the aid of the association. The jealousy of the powers of Europe, private interest, and the force of time, have reduced the members of this wise institution, to the cities of Lubeck, Hamburg, Dantzic, Bremen, Rostock, and Cologne.

3. The deputies of this confederacy, sensible of the necessity of particular laws to regulate their commerce, enacted, in their general assembly, some ordinances relative to navigation. They were published for the first time, at Lubeck, in the year 1591, and not in 1597, as Cleirac, and Emerigon have asserted.(358)

(358) Cleirac, *Us et Coutumes de la Mer*, p. 195. Emerigon, *Traite des Assurances*, tom. 1. preface 13.

4. On the 23d of May, 1614, the deputies of these cities assembled again at Lubeck, when they corrected, and enlarged their former regulations. This last compilation, is entitled, *Jus Hanseaticum maratimum.* The different matters are distributed into a great number of articles, and divided into fifteen chapters, or titles. It is better arranged than the first, but is nearly the same in substance. The difference consists in a few corrections, and alterations. It is written in Latin and German, and is to be found in the work of *Kuricke*, entitled, *Ad Jus maritimum Hanseaticum*, enriched with many excellent notes. It is also inserted in the French language, together with the ordinances of Wisbuy, in the collection of Cleirac, next to the laws of *Oleron.** Among these ordinances, some mention is made of the contract of *Boltomry;* but not a word is said on that assurance. *Conditiones juris maritimi Hanseatici, materiam assecurationis sicco planè pede præterierunt,* says Kuricke, in his *Diatriba de assecurationibus.*†

* In Cleirac, p. 157, the Hanseatick laws are divided into 60 articles. In Kuricke, where they are arranged under 15 titles, the number of articles amount to an hundred. An English translation of them in 60 articles, is inserted in the "Collection of Sea Laws," p. 195.....T.

† Kuricke, *Diatriba de Assecurationibus,* preface. See also Emerigon, tom. 1, preface, p. xiii....T.

ARTICLE XIV.

Of the Laws of France.

§ 1. FOR a long period, France possessed no particular maritime laws, except those contained in a compilation, entitled, *le Guidon de la mer*, or *Us et coutumes concernant les droit maratimes, qui furent adoptés en faveur de la ville de Rouen.* The *Guidon* contains also some ancient ordinances of the kingdom, relative to the merchant marine, of 1400, 1517, and 1584, making a part of the royal ordinances of the admiralty.*

2. Louis the XIVth laid the foundation for the prosperity of navigation and maritime commerce, and secured its future progress, by increasing his naval power, and by rendering a great number of ports and harbours more commodious, more secure, and easy of access.(359) Nothing was wanting to crown

* *Le Guidon* is to be found in the 2d part of Cleirac, *Us et Coutumes de la Mer*, page 179. Neither the author of this collection, nor the date of its compilation, is mentioned. It consists of twenty chapters, several of which relate to the subject of assurance; and though its language is obsolete and incorrect, it contains many valuable principles of maritime law.....T.

(359) During the minority of Louis XIV, France had neither arsenals, naval stores, ship timber, nor even ports; for to have them inaccessible and useless, was the same as to have none. At the death of Cardinal Mazarine, the whole French marine consisted of 18 ships, from 30 to 70 guns. The dearth of naval stores

Louis XIV, establishes the marine of France, and compiles a Code of laws.

the glory of so noble an enterprise, but the formation of a Code of particular laws, in which should be united every thing necessary to instruct mariners in their duties, to establish the police of ports, bays, and rivers, to determine, at the same time, the rights, privileges, and prerogatives of the admiralty, the order to be observed in its judicial proceedings, the functions and duties of judges, and offi-

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was so great, that they were destitute of cables, cordage, sails, &c. and even of powder and matches. Every thing was wanted. At first, Holland furnished these different articles, and even permitted the French to build two ships of the line in that country, and to establish in the city of Amsterdam, a foundery of cannon for the naval service. See *Lett. et Negoc. d'Estrad.* tom. 4, p. 342, &c. The French were not long before they learned how to dispense with foreign aid. Ship-builders from the United Provinces, mast-makers, and forgers of anchors from Sweden, came to France; Riga, Hamburg, and Dantzick, sent rope-makers, weavers, &c. All these workmen had French apprentices, who, in a short time, equalled, or surpassed their masters. A general review of all the persons fitted for the naval service was made, and 60,000 men were soon arranged into classes. Five arsenals were erected, and many ships built in the dock-yards of France. Brest beheld in its road a numerous fleet under the orders of the duke of Beaufort, consisting of fifty ships. In this number was not included, the Levant squadron, the junction of which would have greatly increased the general forces. See *Beaufort's Letters to de Ruyter, the 12th of July,* 1667. This prodigy was performed by the genius of Colbert; for it was truly a prodigy to create a marine under circumstances, in which the taste of the nation, and so many moral and physical difficulties, opposed the gigantic projects of Louis XIV. This prince extended his views still further. He wished to be a maritime legislator, and he became one.—Valin, *Preface à l'Ordonnance de la Marine.*

cers, employed to maintain and preserve a just system in maritime, and mercantile affairs. All this has been admirably performed in the marine ordinance, of August, 1681, which is, without contradiction, the most masterly act of legislation, promulgated by that incomparable monarch, and has become, in some sort, the common law of all the neighbouring nations.*

3. This ordinance has been commented upon by three different writers. Marville, who is the first, published his commentary, in 1714, which met with little success, though there have been six editions of it. Valin, whose commentary appeared in 1760, by the excellence of his observations on this ordinance, in the new edition, published at Rochelle, in 1776, is justly entitled to universal approbation. The third, is by an advocate of Marseilles, of the name of *Jausseau ;* it contains some notes relative to the particular usages of that place.

4. The ordinance of 1681, excepting the title, *des Prises*, contains nothing relative to the military ma-

* Lord Mansfield, to whom the laws of England are so much indebted, appears to have derived much of his knowledge of maritime law, " from this ordinance, and from the elaborate and useful commentary of Valin." Marshall on Insurance, *Introduction*, p. 18. Mr. Abbott, in the preface to his excellent " treatise of the law relative to merchant ships and seamen," in speaking of this ordinance, observes, that, " in matter, method, and style, it is one of the most finished acts of legislation that ever was promulgated."...T.

rine. It was preceded by a collection of separate ordinances, published in 1675, and again, in 1677; but these were of no force after the publication of the general ordinance, of 1689, to which the subsequent ordinances, in 1765, and 1776, made some slight amendments. Since the revolution, laws of the greatest importance relative to the military marine, have been published; but as these are not yet fully settled, it is not proper to give any account of them here.

5. The prosperity of the maritime commerce of France, having given rise to new transactions, to abuses grown into usages, and to principles of commercial jurisprudence, which could not be foreseen in framing the ordinances of 1681, it has become necessary to make an entire reform of the laws by which the affairs of maritime commerce are to be regulated. These circumstances have called loudly for such revision. It was directed to be made by the ancient government; but at that time, the success of the best schemes, and the most useful reforms, depended on the stability of the power of the minister who had the courage to propose them, and maritime legislation continued in this imperfect state until the revolution, during which it degenerated still more.

6. The consular government, more steady in its plans, and more energetic in their execution, conceived the important project of a reform of the commercial and maritime laws. By a decree of the 4th April, 1801, it established a commission, under the

direction of the minister of the Interior, composed of seven members,(360) who were to digest the plan of a commercial and maritime Code. This great work, (to which I have had the honour indirectly to contribute, having been invited to the sittings of the commissioners, who received my opinion on the part relative to maritime affairs) has been completed, and was published in 1802, by a consular decree, of the 6th December, 1802, by which it was directed to be sent to all the tribunals, and councils of commerce, requesting them to give their opinions upon it, within a certain time.

7. If it be honourable for the persons who composed this commission, to have been selected to prepare the new Code of laws, for the regulation of commerce and the marine, and to have acted together with an unshaken zeal and disinterestedness, they have received a recompense the most pleasing and the most flattering to their ambition, in the approbation and praise bestowed by the very persons who must become the judges of their work. The justice thus rendered to the diligence of the commission, and to the sagacity with which the Code has been compiled, has encouraged three of its members, M.

(360) These were M. M. Gomeau, Judge in the Court of Appeals at Paris; Boursier, formerly a maritime Judge; Vignon, the President of the Tribunal of Commerce; Legras, a lawyer; Vital-Roux, a merchant; Coulomb, an ancient magistrate; Mourgue, administrator of the hospitals.

Means employed by the compilers to perfect the new Code.

M. Gorneau, Legras, and Vital-Roux, to publish the motives which guided them in their labours. They have given an explanatory analysis of the observations made by the tribunals, councils of commerce, lawyers, and merchants, on the plan of the Code which had been published, and have themselves proposed the corrections which they think necessary to perfect the work. This excellent production, in which the three compilers have been less influenced by self-love, than a regard to the public good, has produced the revision, which they themselves had the liberality to propose, of the Code framed by the members of the commission. By this happy effect, the work will now appear as the result of the united wishes of the whole nation for whom they undertook it.—May this wise revision, so impatiently expected, be soon submitted to the government for its sanction, that the interests of the French empire may be consolidated on a permanent basis !

ARTICLE XV.

Of the Laws of England.

§ 1. ENGLAND has not yet thought proper to frame a system of maritime laws. This is owing, perhaps, to the difficulty the English have to encounter, in procuring any bill containing new regulations to be passed into a law. They prefer, therefore, to translate into their language the *Jugement d'Oleron*, and the *Us et Coutumes de la mer*, by Cleirac, which has

passed through four editions, since 1661, rather than to propose to the government the formation of a new Code of commercial laws, though the nation admits the want of such a Code.(361)

2. There exists, therefore, no English act of maritime legislation, except the great merchant-charter(362)* of Edward I—the articles agreed to at

(361) Laws of the admiralty of Great-Britain.

(362) " Thus, in mercantile questions, such as bills of exchange and the like; in all marine causes, relating to freight, average, demurrage, insurances, bottomry, and others of a similar nature; the law merchant, which is a branch of the law of nations, is regularly and constantly adhered to. So too, in all disputes relating to prizes, to shipwrecks, to hostages, and ransom-bills, there is no other rule of decision but this great universal law, collected from history and usage, and such writers of all nations and languages as are generally approved and allowed of."—Blackstone's Commentaries, Vol. IV. p. 67.**

** In the paragraph from which the quotation is made in the above note, Blackstone sufficiently explains why their maritime laws have not been established by any statute, or act of parliament. In arbitrary governments, like those of France, the law of nations is enforced by the royal power. In England it forms a part of the law of the land. Thus, the lex mercatoria, or law-merchant, as it is called, is adopted by the English common law, and forms a part of the law of the land, as much as any statute relative to the disposition of estates, or for the punishment of crimes. This law-merchant is grounded on the usages and customs of merchants, and those general rules which prevail among commercial men in all countries. Though the English courts do not allow foreign laws, or writers to have any binding force or authority, they refer to the civil law, the Rhodian law, the Consolato del Mare, to the Jugement d'Oleron, to Cleirac, Pothier, and other

Queensborough, by Edward the third ;† the ancient statutes relative to the powers of the admiralty, and

* Our author, no doubt, means the statute *de mercatoribus*, passed the 11th of Edward I, and re-enacted in the 13th year of his reign,—authorising a certain recognisance, or security to be taken by merchants for their debts, and hence called *statute merchant;* by virtue of which, contrary to the principles of feudal law, the body of the debtor might be imprisoned, and not only his goods be taken in satisfaction of the debt, but his lands also might be delivered to the creditor to be held by him, until out of the rents and profits his debt should be satisfied.—Reeves's History of the English Law, Vol. II. p. 158.—Black. Com. Vol. IV. p. 426.

In the *Magna Charta* of king John, chapter 31, are the following remarkable words: *Omnes mercatores habeant salvum et securum exire de Anglia, et venire in Angliam, et morari et ire per Angliam, tam per terram quam per aquam, ad emendum et vendendum, sine omnibus malis, toltis per antiquas et rectas consuetudines preterquam in tempore gwerre, et si sint de terra contra nos gweriva, etsi tales inveniantur in terra nostra in principio gwerre attachientur sine dampno corporum et rerum donec sciatur a nobis vel capitali justiciaro nostro, quomodo mercatores terre nostre tractentur, qui tunc invenientur in terra contra nos gwerriva, et si nostri salvi sint, ibi alii salvi sint in terra nostra.* Blackstone's edition of Magna Charta....T.

† See Anderson's History of Commerce, Vol. I. p. 352, Dublin edition, 8vo, who cites Vol. IV. 361, of Rymer's Federa....T.

writers, as containing evidence of the law of merchants, established by universal consent and usage, or by decisions grounded on principles of the law of nature and nations, and which may serve to guide their judgments upon points not settled by the adjudications of their own courts. Where doubts arise, the questions are tried by a jury, which may, and usually does consist of merchants, whose verdict, if not contrary to any statute, or the previous decisions of the court on the same point, settles the law. (Black. Vol. I. page

The British navigation act, and other marine regulations.

the wardens of the Cinque-ports ;(363) the famous act of navigation, framed by Cromwell, but which did not become a law until the 12th year of the reign of Charles IId, the 23d September, 1660 ; some acts of parliament to regulate marine assurances, assurances on lives, and against fire ; others, relative to the cus-

(363) The five Cinque-Ports are Hastings, Dover, Sandwich, Romney, and Hythe, to which Rye, Winchelsea, and Seaford have been annexed. These towns are situated on the coast opposite to France, and are specially charged to guard against an invasion; they have a particular governor, called the *lord warden of the cinque-ports*. King John granted them many privileges and courts of their own, on condition of their keeping a certain number of vessels always in readiness to obey his orders.—Blackstone's Commentaries, III. p. 79.

273.) By a regular series of judicial determinations, during the last fifty years, the law of assurance, for example, which forms so important a branch of the law-merchant at the present day, has been erected into a system scarcely inferior to any to be found in the Codes of any other country. These decisions have been collected and well arranged by Park, and Marshall. The law relative to ships, their owners, and persons employed in their navigation, charter-parties, freight, seamen's wages, salvage, &c. has been admirably digested by Charles Abbott. The enlightened candour and liberality of the English courts of judicature in adopting sound principles of reason and good faith in matters of commerce, to be found in the laws received in all commercial countries, cannot be too much praised and admired. The consequence, however, of this practice is, that the English system of maritime jurisprudence has been much slower in its formation, and less perfect in the whole, than if the parliament of England, like Louis XIVth, had collected the accumulated wisdom of all ages, and countries, on marine affairs, and digested the same into an act of parliament. The different modes of proceeding are evidently owing to the different forms of government, and of judicature established in the two countries. — T.

toms, to the augmentation of the marine, and particularly that of 1777, concerning merchant vessels, having *letters of marque*. Besides these acts of parliament, the king is authorised by law to give particular instructions to the commanders of ships of war, and privateers, relative to the vessels of foreign nations.(364)* There are also some particular regulations as to maritime police, and concerning the maritime courts. These courts are, the high court of admiralty, in which the Lord high admiral, or his deputy, decides on maritime affairs, and captures made at sea, in time of war ; and the Court of Delegates, nominated by special commission, and to which an appeal lies from the admiralty courts.†

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(364) The general instructions of 1776 may be seen in Hennings Samlung, *Von Staats Schristen*, tom. 2, page 19. The particular instructions given in 1793 and 1794, are in the collection of Mr. Martens.

* Those of 1794 and 1798 may be seen at the end of the third volume of *Reports of Cases in the High Court of Admiralty*, by C. Robinson....T.

† There appears to have been no lord high admiral since the accesion of the house of Hanover. The king now holds that office, though in a manner distinguishable from his regal character, and it is executed by commissioners. A judge of the high court of admiralty is now appointed by a commission under the great seal. It may be said to consist of two courts, possessing distinct jurisdiction, and held by distinct commissions, though usually given to one and the same person. One is called the *instance* court, proceeding according to the civil law, the laws of Oleron, and other generally received collections of maritime law, the customs of ad-

Maritime laws of England variable.

3. The English, then, in matters of maritime jurisprudence, are obliged to have recourse to the Roman law, and to the common law of the kingdom. For this reason the system of mercantile affairs is often varied by prohibitions, as to matters of fact and law, in regard to questions litigated in their maritime courts.

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miralty, and particular statutes. It has jurisdiction of all matters arising on the high sea, and in many cases concurrent with the courts of common law. This is the ordinary court of admiralty spoken of in the books of English law. The other court, called the *prize-court*, has the *sole* and *exclusive* jurisdiction in all matters of *prize*, and proceeds according to the law of nations. Its origin seems obscure, and some doubt appears to be entertained whether it could not be held without a special commission. It is held, however, in consequence of a special commission issued every war, for that purpose. An appeal lies from the *instance court* to the king in chancery, who appoints *delegates* to hear the cause. From the *prize* court, it lies only to the lords commissioners of appeals, consisting chiefly of the king's council. Several *vice-admiralty* courts are also established in the British possessions in America, from which, when acting as *instance* or revenue courts, an appeal lies to the high court of admiralty, and when as prize-courts to the lords commissioners of appeals. In consequence of the strong representations made to the government of the great abuses of these courts, an act was passed the 2d day of July, 1801, "for the better regulation of his majesty's prize-courts in the West-Indies, and America, and for giving more speedy and effectual execution to the decrees of the lords commissioners of appeals." This act may be seen in the *Appendix*, No. 3, to Robinson's admiralty reports, Vol III. As to the origin and juridiction of the English courts of admiralty, see Brown's *Law of Admiralty*, 2d edition, chapters II, IV, V, VI, and VIII, and the books there cited....T.

4. In 1749, a bill was brought into the house of commons, entitled, *a bill for amending, explaining, and reducing into one act of parliament, the laws relating to the government of his majesty's ships, vessels, and forces by sea ;* but the difficulty above mentioned, has prevented any discussion of this, or any other regulation on the subject.

ARTICLE XVI.

Of the Laws of Holland.

§ 1. THOSE who know that the Dutch have been always engaged in maritime commerce, will be disposed to believe, that they have digested a Code of naval laws. Yet Peckius and Vinnius, their principal writers on this subject, have done nothing more than to comment on the Roman law, in force among them, and to compare it with the usages of the republic. They follow, however, those laws which were observed in the ancient cities of Wisbuy, West Friezland, Rotterdam, and the Hanse-Towns. There are in Holland no laws peculiar to the country, except those made by Charles V, and Philip II, king of Spain.

2. Among this number, for example, are the *Artikel Brief*, or regulations of the states-general of the seven united provinces, concerning the military, and commercial marine ; the ordinances of Amsterdam, Rotterdam, and Middleburg, relative to assurances

and averages, of which six editions have been published, since the first, in 1703 ; considerable additions were made, some years afterwards, which are mentioned by Ricard, in his *Traitè de commerce d'Amsterdam*, part 2, lib. 3, art. 2. This power possesses, besides, several *placards*, the most remarkable of which are those of the 6th June, 1702, to reward privateers ; of the 28th July, 1705, of 1717, 1747, and 1748, for the same object ;(365) the placard and instructions for privateers, the 22d February, 1793, confirming the former of 1781.(366)

3. Holland has long wanted a maritime Code of its own. It was difficult to establish one under the former system of government, when divided into seven provinces, each of which, or rather every city, possessing its peculiar usages, and private interests, always opposed to each other, it was impossible to unite in the establishment of a general system of legislation. At the present day, being formed into one regular republic, when a general peace shall restore maritime commerce, its first attention will, without doubt, be directed to the security of their commercial prosperity by good laws.*

(365) *Recueil der Placaaten, Ordonnentien, &c. Bentrefende de convogen en verdere zeezacken*, t. 1.

(366) *Nierre Verzamelting van Placcaten*, tom. 1, p. 36.

* In Cleirac, p. 302, is the *Coustoumier, pour l'Assurances d'Amsterdam*, published the 31st January, 1598, in 36 articles....T.

ARTICLE XVII.

Of the Laws of Spain.

§ 1. THE civil law of Spain consists of a great number of particular laws, from which the government has from time to time, made compilations in the form of Codes. Of these the most ancient is that of Alphonso the IXth, an edition of which was published in 1587, with a commentary, by Gregory Lopez. Others appeared in the reigns of Ferdinand V and Isabella of Castile, and Philip II.

2. These different Codes, designed for the merchant, as well as the military marine, have particular titles, such as, *Fuero Juzgo*, *Fuero Real*, *Leyes de Partidas*, *Leyes de la Recopilacion*, *Curia Philipica*. These different collections, form the principal maritime jurisprudence of that vast monarchy. The affairs of commerce, which concern individuals only, are decided by marine usages, in the manner and form received among the *Contractaciones*, that is the chief commercial houses, in the great cities of the kingdom.

3. The *Consolato del Mare* is received on the coasts of the Mediterranean, belonging to Spain; and in relation to warlike equipments, assurances, and various other objects, the particular ordinances known by the name of *Capitulos de Barcelona*, are also in force in those parts of the kingdom.

Different Codes of maritime law in Spain.

4. The laws and ordinances of the *Consulate of Bilboa* regulate the maritime affairs which arise on the coasts of the Atlantic. They were arranged and collected for the last time, under the reign of Philip V, and approved by the Council in 1760 ; some ordinances concerning average, and assurances were added to them, in 1768.

5. All matters which concern the commerce of the two Indies form a distinct class, and are subject to the laws and usages of the *Contractacion*, or *Consulate* of Seville, and of the port of Cadiz, and to the decisions and ordinances of the royal Council of the Indies. The first compilation of the laws and usages for those countries, was made in 1563 ; two others were added in 1680, and 1696. There is, besides, a law relative to privateers, *Ordenanza para navegar en corso*, of 1621, with *las Cedulas*,* of 1623, and 1624, and others of 1702, and 1718, the principal articles of which are inserted in the *Tratado sobre de las Presas*, by D'Habreu ;(367) another of 1740, and the last of the 1st July, 1779, with the regulation of the 15th March, 1780.(368)

(367) D'Habreu, *Tratado sobre las presas.* Bertodano, *Collection de las Tratados*, tom. 1, p. iii.

(368) Martens, *Recueil des Traitès*, tom. 4, p. 329.

* Orders, or decrees.

ARTICLE XVIII.

Of the Laws of Portugal.

§ 1. THE maritime laws of Portugal, are nearly the same with those of Spain, to which, as a part of that kingdom, it was a long time subject. The Portuguese however, have some particular ordinances of their ancient sovereigns, which were afterwards confirmed by John of Braganza, on his coming to the throne, at the time of the revolution, the history of which is universally known.

ARTICLE XIX.

Of the Laws of Antwerp.

§ 1. IN former times the city of Antwerp was greatly celebrated for the magnitude, and extent of its commerce. Assurances formed an important branch of its maritime contracts, in the best days of that commercial city. The immense extent of its commercial operations and navigation gave rise, under the dukes of Burgundy, to the first laws worthy of attention on the subject of assurance. Philip IId, king of Spain, in 1563, added some ordinances concerning *wrecks*, *jettisons*, *averages*, and other objects relative to navigation, all of which have been copied into the marine ordinance of France.*

* In *Us et Coutumes de la Mer*, by Cleirac, p. 295 to 302, we find the ordinances of Philip II, relative to assurances for the exchange at Antwerp, in 20 articles, published at Brussels, the last day of October, 1593.....T.

2. The power of this city has been destroyed by one of those revolutions which transfer commerce and the arts from one nation to another. When the Dutch made themselves masters of the navigation of the Scheldt, this city lost, in a great measure, its commercial activity, and its laws are no longer known, since they are no longer supported by that flourishing commerce and navigation, which first gave rise to them.

ARTICLE XX.

Of the Laws of Sweden.

§ 1. IN 1608, and 1618, Sweden published some regulations for the merchant-marine. A collection of laws has also been made under the title of *Legisterium Suecicæ*. This collection has been learnedly commented upon by John Loccenius.(369) It has been enlarged since that time by a general marine ordinance published by Charles XI, in 1667, to which was added, on the 20th of October, 1750, an

(369) Joannis Loccenii, *de jure maritimo.* This work has just been translated into French by M. Bonnemart, a learned lawyer, with very interesting notes. It will be published in a short time.*

* Loccenius was a learned professor of law at Upsal in Sweden, about the year 1670. His book, de Jure Maritimo, does not profess to be a particular commentary on the laws of Sweden, but is a general and concise treatise on maritime law.....T.

ordinance relative to assurances, and averages, the greater part of which is taken from the marine ordinance of France, of 1681.

2. Sweden has also a regulation, relative to armed cruisers, of the 19th February, 1715, another of the 28th July, 1741; a declaration of the same regulation, of the 14th August, 1741; articles for the government of the naval forces, in 1755; and instructions for privateers, published the 1st of July, 1788.(370) The present war has induced the Swedish government to renew, on the 21st of January, 1804, its regulations concerning the navigation and commerce of its subjects, with the maritime powers, in time of war.

ARTICLE XXI.

Of the Laws of Denmark.

§ 1. THE maritime laws of Denmark, published by Christian V, are contained in the fourth book of the Code of the civil laws of that kingdom, entitled, *Jus Danicum*. There is also an ordinance concerning privateers, of the 5th April, 1710, confirmed by another of the 6th April, 1711.(371)

(370) *Kluit. Hist. Fed. Belg.* part 2, page 439,

(371) Forord, *Af Firid.* IV, 1711, p. 23.

2. Christian VI, on the 1st July, 1746, published his royal charter to the assurance company instituted at Copenhagen, which contains many wise regulations, on the subject of insurance, and on averages. A new royal ordinance of the 4th May, 1803, regulates the conduct, and ascertains the duties of merchants and seamen, belonging to the Danish dominions, in time of war between the maritime powers. A *placard* was afterwards published by the king, the 8th June, 1803, to modify the IXth regulation of that ordinance; another ordinance(372) appeared the 30th December in the same year, concerning the salvage of ships, and goods shipwrecked on the coasts of Holstein, or on the shores of the Danish provinces in Germany.(373)

ARTICLE XXII.

Of the Laws of Russia.

§ 1. THE sublime genius of Peter I, and his enterprising character, gave birth to a project unknown to his predecessors, that of taking a distinguished rank among the powers of Europe, though most of his dominions lay in Asia. Enlightened by the various observations made during his travels, in which he spent two years, in disguise, under the name of Michaëlof, in the ship-yards of Amsterdam and England, where he learned the art of ship-building. In-

(372) See *Bibliotheque Commerciale*, by M. Peuchet. 1803.

(373) *Bibliotheque Commerciale*, 1803.

structed by the counsels of men of merit assembled around him, Peter soon perceived, that, to obtain an influence in the affairs of Europe, it was necessary to open a vent into the Baltic for the numerous and rich productions of his vast empire, and, at the same time, to establish a military marine, that might make him known to the other European powers, and to give law to those of the North.

2. The inconsiderate war commenced against him by Charles XII of Sweden, who was beaten at Pultowa, the naval victory obtained over the Swedish admiral Ockrenskield, enabled the Czar to attain his first object. He penetrated through Ingria to the gulf of Finland, and soon after, in 1703, the superb city of Petersburg arose out of the marshes of the Neva, to become the capital of the Russian empire, destined one day to be ruler of the Baltic. He executed the difficult work of forming a junction between the two rivers, which, traversing his empire, open a course of more than eight hundred leagues from Petersburg to the Caspian sea, at the same time that he civilized the inhabitants of the arid deserts of Siberia. Peter having crushed Sweden, and subverted the power of Poland, laid the foundation of that grandeur and glory, which the nation of the Muscovites, a nation of barbarians at the close of the 17th century, has now attained.

3. Notwithstanding all these advantages, and the rich productions of his empire, the Czar did not discover the true system of encouraging the navigation of his subjects, by wise laws, and by the establishment

of a sufficient number of tribunals for the special purpose of deciding all maritime affairs. He did too much for his naval forces, and not enough for the merchant-marine. If he had employed a part of the sums expended on useless gallies, and a moderate fleet, in giving facility to the commerce of the ports of Riga, Petersburg, Revel, and Archangel, the marine of his vast dominions would have felt, at the present day, the beneficial effects of such a measure, while, in fact, it now falls far short of that magnitude, importance, and prosperity, it might have attained.

4. There are, it is true, several tribunals in Russia, which take cognizance of maritime and commercial disputes, according to the account given us by M. Peuchet, in the second volume of his commercial dictionary. These are, the court of the customs, which decides, in a summary way, all matters demanding a speedy determination; the exchange magistrate, to whom is referred questions as to charter-parties, bills of exchange, and other obligations of a similar nature; the court of police, which takes cognizance of affairs incident to that part of the internal administration; the senate, before whom is brought all matters in controversy between parties, that require a legal discussion and a formal determination: but all these courts, for want of precise laws, are very slow in giving judgment. The college of *commerce*, as it is called, constituted by a special commission from the sovereign, must be considered as a council of statesmen, who regard merely the

Delays in the decision of causes in Russian courts.

grand features of commerce, and take notice of those affairs only that are essentially connected with the political views of the government.

5. The decision of causes litigated in the Russian territories, on the Black Sea, is far more tardy than at Petersburg, because the native Russians, sure of finding favor there, are certain of bringing before the senate all the causes the least complicated, which cannot be determined by the summary adjudication of the court of customs, or the other courts established there ; a foreigner is thus compelled to go to the capital to plead his cause in person, or to employ a lawyer, which renders the proceedings more expensive, difficult, and dilatory.

6. Catharine II, who governed the Russian empire with so much glory, perceived the necessity of creating a Code of maritime law for her dominions : she laid the basis of it in the plan which she published for making the compilation. She openly expressed her opinion, in 1780, on the sole object of the conventions she had produced among the maritime powers of Europe, as to the effect of establishing a maritime Code, which should forever fix the rights of neutral nations, in time of war. In the mean time, she began by publishing, in 1784, an ukase, or ordinance, making some alterations in the former commercial regulations, for the possessions she had acquired on the Black Sea, and, principally, for the city of Cherson, founded by her, on the banks of the Dneiper. By an ukase of the 31st December, 1787, she published regulations for privateers, and concerning

privateering, in time of war. These regulations, for their wisdom, deserve to be imitated by the other powers of Europe.(374) Alexander I, the worthy successor of that great princess, considering the sagacity of his character, will not fail to follow the plan traced out by his illustrious ancestor, and to give to his empire a Code of maritime laws, the want of which is every day felt in the course of commercial and maritime transactions.

ARTICLE XXIII.

Of the Laws of other Northern States of Europe.

§ 1. PRUSSIA, Lubeck, and some of the Hanseatic cities, regulate their maritime affairs by particular statutes; but it is not known that any other cities, dependent on the German empire, or the emperor, have any laws on this subject. It is well known how celebrated, throughout all Germany, is the *Judicium mercatorum;* besides, all the countries in which the civil law is observed, have recourse to that as the common law, for the decision of all matters relating to commerce and navigation, whenever the local laws are silent on the subject.

2. In the countries subject to the dominion of the house of Austria, the city of Trieste, with its dependencies, such as Fiumo, Carlobargo, and Portoro, regulate their maritime affairs, in conformity to the edict of *merchant-navigation*, promulgated by the empress Maria Theresa, the 25th April, 1774.

(374) See the *Collection of treaties,* by the learned M. Martens, Vol. 4, page 507.

ARTICLE XXIV.

Of the Ottoman Laws.

§ 1. WE do not know of any maritime laws peculiar to the Ottoman empire, and to the regencies established on the Barbary coast, subject to the grand Seignior. It appears, that they are acquainted with no other than those of the nations with whom they traffic. Formerly, vessels were not allowed to navigate in the different ports of the Levant, except under the protection of the French flag. The consuls of that nation were the only judges of all differences relative to maritime commerce, either between Frenchmen and Turks, or between the former and the inhabitants of the country. But, at the present day, an entire change has taken place, since other nations are permitted to trade there in their own names.—The Cadis of the different sea-ports, in fact, observe the different usages adopted by the different commercial nations, and religiously conform to them, in deciding differences of a mercantile nature, which arise between Turks and strangers, and it sometimes happens, that even the French are subject to their jurisdiction.*

* The French have now lost all favour and influence in the dominions of the Ottoman Porte, and the English have become the most favoured nation, and will probably, by means of their great naval power, and the possession of Gibraltar and Malta, maintain that ascendancy in the Mediterranean once held by the French....T.

Maritime laws of Naples.—New Code projected.

ARTICLE XXV.

Of the Laws of Naples.

§ 1. CHARLES III, who died king of Spain, when he was king of Naples, collected all the most useful and necessary laws relative to navigation, and maritime commerce, in the 14th act* of the 31st January, 1759, and reduced them into 72 chapters. To prevent any confusion, he abolished all former decrees, and all previous laws relative to maritime subjects.

2. Ferdinand IV, the reigning king of Naples, by the 18th act, of the 5th February, 1764, entitled, *De officio supremi magistratus commercii,* has regulated and placed in better order the jurisdiction of the supreme magistrate of commerce, as well as that of the Consulate, by specifying the particular cases in which each must exercise their jurisdiction.

3. Persons are already engaged in this kingdom, in the compilation of a new maritime Code, the publication of which is expected.(375) The king, after

* *Pragmatique.*—This word is often used substantively to signify those acts or ordinances, which are passed by a sovereign to regulate his own estates and family....T.

(375) In 1789, during my journey to Naples, I had occasion to read this new Code, which was about to be printed in four volumes quarto, of 500 pages each. The disgusting prolixity, and want of method in this work, which has been executed by M. Jorio, then a member of the court of commerce, made me suppose that it would never be published, and the event has so far justified my predictions.

making, on the 20th February, 1764, an ordinance relative to marine assurances, which is a sequel of the edict of his father, published the 11th April, 1761, has thought proper to abolish the court of the high admiral, and to substitute in its place, by an edict of the 6th December, 1783, a tribunal, called the admiralty, to which is given, the jurisdiction of maritime affairs. He has, besides, published, in an edict, of the 15th March, 1787, a tarif of Consular fees. In all other cases, the ancient acts, and the decisions of the civil tribunal are observed. The marine ordinance of France, of 1681, possesses great authority there.

ARTICLE XXVI.

Of the Laws of Venice.

§ 1. VENICE is the only Italian state which has executed the great work of a particular maritime Code, adapted to its local circumstances. This republic may boast of being the first in Italy which has a complete body of laws relative to the affairs of maritime commerce. It was published in 1786, under the title of the *Codice per la Veneta mercantile marina.* It was approved by a decree of the Senate, the 20th September, in the same year, and has thus acquired the force of law. A supplement, containing some corrections and alterations, was added, sanctioned by two decrees of the Senate, the one on the 6th August, and the other the 19th September, of the same year.

ARTICLE XXVII.

Of the laws of Tuscany.

§ 1. TUSCANY possesses no other maritime laws, than those contained in the ancient statutes of the offices of assurances in the city of Florence, published the 13th March, 1522, by the council of one hundred; but there is a very concise edict of the 10th of October, 1748, on commerce and the mercantile marine, to which were added, in 1787, the laws and orders already published to regulate the police of the harbour, and the wet docks and basons, adjacent to the port of Leghorn. The queen regent, infanta of Spain, desirous of distinguishing her government by some signal act of glory, will, without doubt, prepare a new Code on maritime affairs, of which the commercial places of Tuscany have much need.*

ARTICLE XXVIII.

Of the Laws of Genoa.

§ 1. THE republic of Genoa has no other regulation for its maritime affairs, than an ancient sta-

* In the former edition of this work, written before the Italian states were drawn into the tremendous vortex of the French revolution, and before their governments, their laws, their wealth, and power, became the prey of the rapacious invaders of Italy, the preceding part of this sentence was filled with the name of Ferdinand III, whom the author praised for his glorious reform in the criminal Code of Tuscany....T.

tute published in 1610, in which mention is made, book 2, chap. 4, in very concise terms, of some very brief causes, relative to maritime affairs. The 16th chapter of the 4th book treats of *jettisons*, and of the conduct which ought to be observed, on such occasions. Genoa, also, adheres to the decisions of its civil tribunal called the *Rota*.* The laws of the *Consolato del Mare*, are in full force there. The work of Targa, also, entitled, *Ponderazioni Maritime*, is of high authority in the tribunals of commerce. This work is in all respects conformable to the usages prescribed by the *Consolato del Mare*, and to the ancient maxims of that place, which, for want of a stable law, adapted to the circumstances of the times, are often in opposition to the new decisions of the magistrates, and to existing usages.

ARTICLE XXIX.

Of the Laws of Sardinia.

§ 1. THE maritime states of the continent, subject to the king of Sardinia, are acquainted with no other marine laws than those contained in the royal edict, rendered, the 12th March, 1749, for the free port of Nice, which renewed, and considerably enlarged, the privileges and immunities given by former edicts, one of 1613, and another, for the re-establishment of the supreme magistracy of the Consulate in that city, of the 15th of July, 1750. This edict

* Many of the decisions of this court are to be found in *Straccha de Mercatura*....T.

increased the dignity, and extended the jurisdiction of this court erected by the edict of the 15th October, 1733.(376) In these edicts are a few articles relative to marine assurances, and shipwrecks. As to all other matters, the Roman law, the *Consolato del Mare*, and the decisions of the tribunals above mentioned, have the force of law.

2. At the period of the publication of the laws contained in the *Consolato del Mare*, Sardinia was under the dominion of the republic of Pisa. After several times expelling the Saracens, commanded by their king *Musetto*, they divided the island, in 1021, into four judicatories.(377) From 1165, it was possessed by the Pisans as a perpetual imperial fief, granted to them by Frederick II, emperor of the Romans, until 1327, when they were compelled, by force of arms, to yield it to king James of Arragon.(378) From this it may be presumed, with the greatest reason, that Sardinia, until that period, must have regulated its maritime affairs, according to the laws of the Pisans, which were already observed by other nations engaged in maritime commerce.

(376) It is in this Court that I had the honour to sit as a Judge, with the title of Senator, from the year 1782 to the 29th September, 1792, when the armies of the French republic seized on the county of Nice.

(377) See my Geographical, political, and natural history of Sardinia, Paris, 1802, Vol. I.

(378) Treaty of peace made at Barcelona in 1327, between the king of Arragon, and the republic of Pisa.

3. The island having passed under the dominion of the king of Arragon, and received the same form of government to which the Catalonians were subject, the inhabitants were directed to conform to the usages and customs of Arragon, and in particular, to the *Consolato del Mare*, published at Barcelona. This is the reason why Vico, in his compilation of the royal acts of Sardinia, title 48, says, that the Consul was bound to conform to every thing prescribed in the 22d chapter of the *Consolato;* and this is so scrupulously observed, that the secretary to the magistrate, in the register which he makes of the departure, and arrival of vessels, never fails to enter the act of *search*, *dei Gatto*, prescribed by the 67th chapter of the *Consolato*.*

4. From the observations communicated to me by M. Chevalier Cossu,(379) my worthy and ge-

* *Gatto*, Cat.—This is the 66th chapter of the *Consolato del Mare*, in the edition of Casaregis of 1737.

(379) M. Chevalier Cossu, is a man of distinguished learning, who, on account of his literary works, deserves well of his country. After the publication of the first Italian edition of my former work, he did me the honour to write me the following letter, which is too valuable for me to omit this opportunity of preserving.

"Cagliari, 29 maggio 1795.

"*Signor Senatore stimatissimo.*

"Appena riconstrato, che pervenne in questa capitale il primo tomo dell' opera da V. S. illustrissima recentemente lavorata, rapportante il *Sistema universale dei Principii del diritto marittimo dell' Europa*, siccome ebbi la soddisfazione di leggere il raggionato di lei *Dizionario universale della Giurisprudenza mercantile*, mi procurai un esemplare di questa nuova produzione propria della pre-

nerous friend, and countryman, it appears that there still exists in the archives of the city of Cagliari, a book entitled, *Libre de Consulat dels fets maritimo*, which is probably the same as that mentioned in article 8; also, a privilege granted by Peter I, in favor of the Catalonians, beginning with *Recognoverunt*

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sente stagione. Fu in vero tanto soddifacente il piacere ch' ebbi nel leggerla, che stimai rileggerla, e farvi diversi riflessi, trattando una materia, che interessa grandemente questo regno, il quale per essere isolato ha molta maggior estensione nel mare territoriale, che nella superficie terrena: anzi per tutto quel vasto mare, che lo bagna dalla parte di ponente, gli antichi geografi l'attribuirono la denominazione di mar Sardo; ed a quella che trascorre tra l'estremità Settentrionale di Sardegna e meridionale di Corsica (stretto di Sardegna.) Ebbi in conseguenza pure la dolce compiacenza di sentire, che le persone di vaglia encomiavano il lavoro, e si compiacevano meco, che un Patrizio di Sassari acquisti presso le più culte nazioni quel credito sempre maggiore, che le utilissime sue letterarie produzione le fanno giustamente meritare. All' oggetto però non consideri questa mia asserzione adulatoria per la prima volta che ho il vantaggio di scriverle, soffra che gli esterni il desiderio, che avrei avuto di non osservarlo tanto conciso nell' articolo 25 (ora articolo 29,) nel quale annunzia le Sarde leggi marittime, poicchè, se gli stati del nostro sovrano al di la del mare non conoscono che gli editti del 1613, 1626, 1733, 1749, e 1750, la Sardegna sa questo particolare, oltre l'editto delli 30 agosto 1770 conserva ne' suoi archivi quanto ho stimato notare nell' unito foglio. Spero che vorrà condonarmi l'ardire d'offrirli queste notizie di fatto per farne quell' uso che stimerà. Dobbiamo alla patria, come dice, seguendo Temistocle, il Vico nel proemio delle Sarde Prammatiche, rispetti quasi divinali, ed il servire la propria patria non è un dovere chimerico, ma un obbligo reale, onde occorrendo di dover di essa far menzione, l'omettere d'un Sardo quanto concorre per illustrarla in questi tempi massime, gli attira un capo di accusa, e regolarmente da quei, che non dando fuori letterarie fatiche con troppa facilità prendona a censurare le altrui. Ementre anzioso di

proceres, communicated to the city of Cagliari, to be in force there, with two other chapters relative to commerce, as well as an explanation published by king James I, his successor, in August, 1271; the 37 chapters of king Peter III, in the Catalonian language, dated the 10th of the Kalends of December,

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leggere il secondo tomo di quest opera ed altre sue letterarie produzioni alle quali prego di farmi associare, con insuperabile stima et sincero affetto mi do l'onore di protestarmi qual sono.

" Div^mo obb^mo servidore,
" Cossu."

My answer to this obliging letter, dated Florence, 2d July, 1795, is in these words:

" Quanto sono sensibile, Sig^r Cave stimatissimo, alle gentili espressioni colle quali ella mi onora, nella di lei lettera del 29 scorso maggio, altrettanto mi dichiaro riconoscente alla bontà che ha avuta di notarmi, nel foglio alla medesima unito, tutto ciò che poteva aver rapporto alla nostra legislazione sulle cose maritime. Mi rincresce, che le memorie da lei favoritemi siano pervenute dopo la pubblicazione del primo tomo, giacchè non saprei più rimediare alla mancanza involuntaria, che ho commessa nell' articolo 25, da lei giustamente rilevata. Non mancherò per altro di tenerne conto per l'occorrenza d'una nuova edizione; ed in tal caso renderò giustizia al di lei merito con farlene tutto l'onore. Mancando io dalla patria doppoi ventidue anni non potevano essermi noti gli antichi documenti e le materie che contengono: tanto più dunque le ne debbo la mia riconoscenza per avermene ella somministrati gli opportuni riscontri senza richiedernela; ed in ciò ho ammirato il sincero e lodevole di lei patriotismo abbastanza conosciuto per le varie eccellenti produzioni, che ella ha pubblicate sulle cose patrie. Permetta una volta il cielo, che venga nell' idea del governo la coraggiosa risoluzione di riformare l'indigesta immensa mole delle nostre leggi, per ridurle a quella semplicità altrettanto desiderata in simili materie, quanto proficua ai cittadini. Ignorerà ella forse che nel 1790, mi fu ordinata dal sovrano la compilazione d'un

Ordinances for regulating maritime affairs in Sardinia.

1340, for the regulation of maritime affairs, which he ordered to be observed in the kingdoms of Arragon, Valencia, Sardinia, Corsica, and the province of Barcelona; the 29 chapters which the counsellors of Barcelona published, relative to marine assurances, in 1484, with various other ordinances, emanating from those sovereigns, from the authority of the civil magistrate, and some others, collected by the *Cortes*, or general assemblies, at the instance of the magistracy of Cagliari, and particularly those by the *Cortes*, held in 1605, under the Viceroy, Count Delda; in 1615, by the Duke de Gandia; in 1663, by the Marquis of Bayonne, all of which are given by Dexart, in his collection, entitled, *Capitulos de Corte*, from the year 1421, to 1633, under the title *de Gravaminibus*. We find also in the same collection, book 3, lib. 12, chap. 30, that, in 1605, and 1633, they had fixed the jurisdiction of foreign Consuls, resident in the kingdom, after the abolition of the treaty, called *mealla*, or *malla*, which took from them, and gave to the consular

nuovo Codice di leggi sulla marina mercantile per tutti gli stati di S. M. Io l'eseguii ed ebbi l'onore di rassegnarlo al sovrano nel principio d'ottobre del 1791. Fu il mio lavoro assai gradito, e lodato, ma fu posto anche in oblio. Non posso dire se il poco merito del lavoro, o l'invidia l'abbian fatto mettere da parte. In qualunque modo, io l'ho sempre sotto gli occhi e medito la sua pubblicazione, sia per utile della società, che per mio proprio interesse, onde non sia un giorno obbligato anch' io di ripettere, *hos ego versiculos feci, tulit alter honores.* Mi onori de di lei preziosi comandi, e mi creda colla più perfetta stima e considerazione.

De^mo ab^mo servidore,

D. A. Azuni.

magistracy, the jurisdiction over all foreigners who had no Consul of their own nation, and to take them under its care and protection, until they should be provided for by their respective governments.

5. The laws relative to maritime affairs now in force in the kingdom of Sardinia, are, the *Consulato del Mare* above mentioned, in all the cases which have not been expressly abrogated by the decrees of the sovereigns of Arragon, or by the *Capitulos de Corte*, published under the government of the reigning house of Savoy ; the last edict of Charles Emmanuel, for establishing Consulates throughout his kingdom, dated the 30th August, 1770, exactly copied from that relative to the *Consulate* of *Nice*, and confirming to the captain-general of Cagliari, the privilege of deciding causes relative to marine captures, as well as the right of a general intendant to determine all cases of seizure for contraband ; the edicts of the government and magistracy of the royal Audience of the United Chambers ; and, lastly, in case of necessity, the Roman law.

END OF VOL. I.

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